

PUBLICATION

Proposed Revisions to FMLA Leave for Military Caregivers and Airline Flight Crews

February 8, 2012

On January 30, 2012, the Department of Labor's (DOL) Wage and Hour Division issued a notice of proposed rulemaking to revise regulations under the Family and Medical Leave Act (FMLA) regarding leave for military caregivers and airline flight crews. The proposed regulations would implement changes to the FMLA made by the National Defense Authorization Act (NDAA) for Fiscal Year 2010 and the Airline Flight Crew Technical Corrections Act (AFCTCA). Among other things, the new rules would expand military caregiver leave and add a special hours of service eligibility requirement for airline flight crew employees. In addition, the proposed rules also would impact certain regulations for calculating FMLA leave and for reinstating employees following FMLA leave.

FMLA Leave For Military Caregivers

The NDAA, enacted in October 2009, expanded the FMLA's military leave provisions by:

- Allowing family members of active regular armed forces members, in addition to family members of Reserve and National Guard members, to take leave for qualifying exigencies; and
- Extending military caregiver leave to:
 - include care for certain veterans, which was previously only available to family of current service members; and
 - cover serious injuries or illnesses that result from the aggravation of a preexisting condition during military service for both current service members and veterans.

In its fact sheet, the DOL identified the major provisions of the notice of proposed rulemaking as:

- Extending:
 - military caregiver leave to eligible family members of covered veterans with a serious injury or illness;
 - military caregiver leave to cover serious injuries or illnesses that result from the aggravation of a preexisting condition during military service for both current service members and veterans; and
 - qualifying exigency leave to eligible family of members of the Regular Armed Forces.
- Including:
 - a flexible, three-part definition for serious injury or illness of a veteran; and
 - a foreign deployment requirement for qualifying exigency leave for the deployment of all service members, including National Guard, Reserves and Regular Armed Forces.

The proposed rule also would extend the amount of leave an employee may take to be with a covered family member for rest and recuperation purposes from five days to 15 days.

FMLA Leave For Airline Flight Crews

The AFCTCA, enacted in December 2009, established a special leave eligibility requirement for airline flight crews. Because flight crew workers often work unusual schedules that are insufficient to satisfy the FMLA's 1250-hour annual threshold for leave, the AFCTCA amended the FMLA's eligibility rules to permit flight crew employees to meet the hours of service requirement if, during the prior 12 months, they have worked or been paid both:

- for at least 60% of the applicable monthly guarantee; and
- for at least 504 hours.

The DOL stated that its proposed rules would add:

- a special hours of service eligibility requirement for airline flight crew employees; as well as
- specific provisions for calculating the amount of FMLA leave used by airline flight crew employees.

Additional Changes

In addition to the provisions noted above, the notice proposes to:

- prohibit employers from utilizing different increments of FMLA leave at different times of day under certain circumstances and instead require them to calculate FMLA leave usage using the employer's shortest increment of leave; and
- clarify the provision permitting employers to delay reinstatement where it is physically impossible for the employee to return to his or her job in mid-shift.

The DOL invites written comments on the proposed rule at the federal rulemaking [website](#) or by mail to Mary Ziegler, Director of the Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3510, 200 Constitution Avenue, N.W., Washington, D.C. 20210. Comments on the proposed rule must be submitted within 60 days of its publication in the Federal Register.