



FMLA Legislative Update

Effective January 16, 2009, all employers subject to the Family and Medical Leave Act (FMLA) must comply with updated Federal Regulations. Due to the breadth of these changes, and potential impact on businesses, Clark-Mortenson wants to be sure our clients and business partners “Are Ready”. Below is a **partial** list of changes; for more information, or assistance complying with the updated regulations, please contact your Clark-Mortenson representative or visit the Department of Labor’s website at www.dol.gov.

Employee Notice - Requires the employee to follow the employer's normal and customary call-in procedures, unless there are unusual circumstances. Also allows an employer to delay or deny FMLA leave when an employee fails to comply with the employer’s notice policy; unless an unusual circumstance exists.

Employer Notice - Employers now have 5 business days, if feasible, to provide written notice.

Eligible Employee - The revision clarifies a break in employment cannot exceed 7 years, unless it is related to military obligation or outlined in a written agreement.

Military Caregiver Leave - Expands FMLA protection for family members caring for a covered service member with a serious injury or illness incurred in the line of duty. These family members are eligible to take up to 26 workweeks of leave in a 12-month period.

Leave for Qualifying Exigencies for Families of National Guard and Reserves - Allows families of National Guard and Reserve personnel on active duty to take FMLA job-protected leave to manage their affairs as "qualifying exigencies". The rule defines "qualifying exigencies" as: (1) short-notice deployment (2) military events and related activities (3) childcare and school activities (4) financial and legal arrangements (5) counseling (6) rest and recuperation (7) post-deployment activities and (8) additional activities where the employer and employee agree to the leave.

Serious Health Condition - Clarifies “continuing treatment” for a period of incapacity or a chronic condition. If an employee takes leave for more than three consecutive calendar days of incapacity plus two visits to a health care provider, the two visits must now occur within 30 days of the period of incapacity. The rule also defines "periodic visits to a health care provider" for chronic serious health conditions as at least two visits per year.

Light Duty - If an employee is voluntarily on light duty, s/he is not considered to be on FMLA leave.

Perfect Attendance Awards - Allows employers to deny "perfect attendance" awards to an employee who does not have perfect attendance because he or she took FMLA leave. This applies only if the employer treats employees taking non-FMLA leave in an identical way.

Certification of Serious Health Condition - Allows employer to contact the employee's health care provider for verification or certification purposes in certain circumstances; as long as the employer is not the employee's direct supervisor.

We must reiterate, this is only a brief overview of some of the changes in the FMLA, this is not a complete list. There are more than 50 changes incorporated into the final FMLA Regulations, including updated and additional forms to help with administration. If you would like additional information or need assistance complying with the Family and Medical Leave Act, please contact your Clark-Mortenson representative.

****Clark-Mortenson is providing this information solely as general guidance and this should not be considered legal advice. We are *only* offering assistance from a risk management perspective. Any legal issues should be reviewed by your legal counsel to apply the laws to the particular facts of your situation.**



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