

FMLA Allows Additional Leaves of Absence

In a continuing effort to bring our customers the latest news and updates on changes in the law that impact you and your employees, HealthSCOPE Benefits is providing you with this Compliance Corner on some important changes in The Family and Medical Leave Act of 1993 ("FMLA").

On 1/28/08, President Bush signed the National Defense Authorization Act for Fiscal Year 2008. Section 585 of this new law amends the FMLA to allow 2 new types of leaves of absences ("LOA") as qualified FMLA leaves of absences for employees who are relatives of service members.

First New LOA: The first new LOA is referred to as a *qualifying exigency leave*. Under this LOA, an eligible employee is entitled to take up to 12 work weeks of leave during any 12-month period for a *qualifying exigency*. The qualifying exigency must be the result of the employee's spouse, son, daughter, or parent being on active duty or receiving notification of a call or order to active duty in the Armed Forces in support of a contingency operation (a specified military operation). A qualifying exigency will be further defined and qualified in regulations which will be issued by the Department of Labor.

Second New LOA: The second new LOA is referred to as a *service member care leave*. Under this LOA, an eligible employee who is the spouse, son, daughter, parent, or next of kin (i.e. nearest blood relative) of a *covered service member* is entitled to up to 26 work weeks of leave during a 12-month period to care for the service member. A covered service member is a member of the Armed Forces (including the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is an outpatient, or is on the temporary disability retired list, for a *serious injury or illness*. A serious injury or illness is an injury or illness that was incurred in the line of duty while on active duty in the Armed Forces that may render the service member medically unfit to perform his or her duties.

- Note regarding the 26-week LOA period: During a 12-month period in connection with a service member care leave, an employee shall be entitled to a combined total of 26 work weeks for all leaves that qualify as a LOA under the FMLA.

Additional Administrative Changes Under the Law: Some additional administrative changes were also made under the new law. For example:

1. If the qualifying exigency is foreseeable, the employee must provide notice to the employer that is reasonable and practicable.
2. The new law also addressed unpaid LOAs. If the employer's current PTO policy provides paid time off that is less than the weeks permitted for the FMLA LOA (whether the FMLA LOA is a 12-week or 26-week LOA period), the additional weeks needed to attain the FMLA LOA may be provided without compensation.
3. The new law also addresses the circumstances under which paid leave may be substituted in connection with the service member care LOA. An employee may elect, or an employer may require the employee, to substitute any of his or her accrued paid vacation leave, personal leave, family leave, medical or sick leave for any part of the 26-week LOA period. An employer is not required to provide paid sick or medical leave in any situation in which the employer would not normally provide such paid leave.

Effective Date and Compliance: The new requirements are generally effective as of January 28, 2008, except that the qualifying exigency leave provisions will not be effective until the Department of Labor has issued final regulations regarding the same. However, the Department of Labor is encouraging employers to comply with all of the provisions of the new law immediately. In addition, don't forget that employers that are subject to FMLA are generally required to maintain health plan benefits for employees who are on an FMLA LOA on the same terms and conditions as if the employees had continued to work. Therefore, employers may wish to review their plan documents, SPDs, administrative procedures and any LOA forms currently used in the workplace to accommodate the new LOA requirements.

For a copy of The Family and Medical Leave Act of 1993, as amended with the new changes, go to: http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm and click on the link at the bottom of the page.

Should you have any questions regarding these new changes, do not hesitate to contact your HealthSCOPE Benefits account executive.

Source: Contributing Editors - EBIA Staff

The information contained herein should not be construed as a legal opinion or legal advice. HealthSCOPE Benefits recommends that the employer seek advice of their legal counsel regarding the employer's FMLA obligations.