

Family and Medical Leave Act Amendment

On January 28, 2008, President Bush signed into law the first expansion of The Family and Medical Leave Act (FMLA). Additional revisions by the Department of Labor clarify previously undefined items of the 2008 expansion. Final revisions and definitions, effective January 16, 2009, provide:

- *Exigency Leave*, stemming from the call to active duty of an employee's family member, and
- *Caregiver Leave*, which allows up to 26 weeks of leave for those employees who are a spouse, son, daughter, parent, or next of kin to care for family members who are military service members with a serious illness or injury.

Exigency Leave

- Only available to employees with family members in the National Guard, Reserves, or retired service members called to active duty in support of a contingency operation from retired status, Ready Reserve, Selected Reserve, and other Reserve Units, as well as activated National Guard units in certain circumstances.
- Not available to employees in the Regular Armed Forces
- Eight (8) uses for *Exigency Leave* are defined by the Department of Labor; all must be directly related to the call to active duty:
 - (1) Short-notice deployment: Up to seven calendar days of leave to address any issue that arises when a covered service member is called to active duty seven days or fewer before deployment.
 - (2) Military events: To attend any ceremony, event, program, or activity sponsored by the military, a military organization, or the American Red Cross.
 - (3) Childcare and school activities: To attend to various childcare and school activities affected by a covered military member's call to active duty, such as to arrange for alternative childcare, provide emergency childcare, or deal with school or daycare enrollment necessitated by the active duty call, or to attend school meetings necessary due to circumstances arising from the active duty call.
 - (4) Financial and legal arrangements: To address the covered military member's absence.
 - (5) Counseling: For the employee, a covered military member, or child, other than by a health care provider necessitated by a call to active duty.
 - (6) Rest and recuperation: With a covered military member who is on temporary, short-term rest and relaxation during a period of deployment.
 - (7) Post-deployment activities: To attend military-sponsored events within 90 days after deployment.
 - (8) Additional activities: Arising from a call to active duty that is agreed upon between the employer and the employee.

Caregiver Leave

- Is available for all military service members, including members of the Regular Armed Forces
- Allows up to 26 weeks of military caregiver and regular FMLA leave to be taken within a fiscal year
- Qualifying family member will not be able to take leave to care for a servicemember after the servicemember retires or is discharged, unless the individual is on the “temporary disability retired list”

Definitions

Contingency Operation – the operation qualifies as a *contingency operation* if:

1. The operation is designated by the Secretary of Defense as one in which members of the armed forces are or may become involved in military action, operations, or hostilities against an enemy of the U.S. or opposing military forces
2. The operation results in the call or orders to, or retention on, active duty of members of armed forces under specific statutory provisions of Title 10 of the U.S. Code.

Covered Servicemember – a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

Serious Illness or Injury – in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating. Additionally, leave may be taken while the servicemember is undergoing treatment, recuperation, or therapy, is on outpatient status, or is on the temporary disability list.

Next of Kin – the “nearest blood relative” other than a spouse, parent, son, or daughter, unless the employee has designated another blood relative as next of kin for the purpose of caregiver leave.

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