



Labor: 7 major changes proposed in new FMLA amendments

The DOL's amendments target military airline flight crew employees

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On Jan. 30, 2012, Secretary of Labor Hilda L. Solis announced that the Department of Labor (DOL) had issued a notice of proposed rulemaking intended to implement new statutory amendments to the Family and Medical Leave Act (FMLA). The amendments expand military family leave provisions and incorporate a special eligibility provision for airline flight crew employees.

In her statement announcing the proposal, Secretary Solis stated that “[k]eeping the basic promise of America alive means ensuring that workers, from our servicemen and servicewomen who keep us safe at home to the flight crews who keep us safe in the skies, have the resources, support and opportunities they need and have rightfully earned.”

The following summarizes the major changes contemplated by the proposed rules:

1. Expanding military caregiver leave to cover family members of veterans with serious injuries or illness incurred in the line of active duty, where the veteran is undergoing medical treatment, recuperation or therapy; or if the veteran was a member of the Armed Forces at any time during the five-year period preceding the date of the medical treatment, recuperation or therapy. Previously, the law only covered family members of currently serving service members.

2. Expanding the definition of “serious injury or illness” for military caregiver

leave for veterans and current members of the armed forces to include an injury or illness that existed prior to service and was aggravated in the line of active duty.

3. Adding private health care providers not affiliated with the Department of Defense (DOD) or Veteran’s Affairs (VA) to the authorized health care providers that may provide the necessary “serious illness or injury” certification for military caregiver leave. However, if the certification is made by a private health care provider, the employer may seek second or third opinions regarding authentication or clarification of the certification, whereas, such second or third opinions are not permitted if the certification comes from a DOD or VA sanctioned health care provider.

4. Extending qualifying exigency leave to qualifying family members of regular armed forces service members called to covered active duty. Previously, the law covered only qualifying family members of National Guard service members, reservists and retired service members of the regular armed forces.

5. Requiring that service members be called to duty in a foreign country before they are entitled to qualifying exigency leave. Previously, there was no requirement that National Guard members and reservists be deployed to a foreign country.

6. Increasing the amount of time an employee may take for qualifying rest

and recuperation (R&R) exigency leave from five days to an amount of time equal to that provided to the military member, not to exceed 15 days. Certification of qualified R&R exigency leave requires a copy of the military member’s R&R leave orders or other documentation issued by the military and the dates of the leave. Alternatively, employers may use another form containing the same basic information as long as the form does not require information in addition to that required by the proposed rule.

7. Establishing a special “hours of service” eligibility standard for airline flight crew employees. The rule would incorporate the expanded definition of “hours of service” found in the Airline Flight Crew Technical Corrections Act (AFCTCA) for airline flight crew employees. Pursuant to AFCTCA, the “hours of service” criteria are met if, during the previous 12-month period, the airline flight crew employee worked or was paid for not less than 60 percent of the applicable monthly guarantee and worked or was paid for not less than 504 hours (not including personal commute time or time spent on vacation, sick or medical leave). The rule remains based on “hours worked” for all employees other than flight crew employees.

Public comment on the proposed rules is invited through April 16, 2012. The proposed regulations do not become effective until after the comment period, when the DOL issues a final rule. Comments may be made by visiting the [DOL website](#).