

*New FMLA Regulations Concerning Military Families,
Airline Flight Crews, And Intermittent Leave Take Effect*

By Lori Rittman Clark, Schwartz Hannum, P.C., Hartford, CT

The U.S. Department of Labor (“DOL”) has issued new Family and Medical Leave Act (“FMLA”) regulations that expand military family leave, provide an alternate method for determining the eligibility of airline flight crews, and impose heightened requirements for intermittent leave. These new changes take effect immediately.

Military Family Leave

The new regulations expand military family leave to include care for (i) a current service member who suffers a serious injury or illness in the line of duty or (ii) a veteran discharged (other than dishonorably) within the past five years who is undergoing treatment, recuperation, or therapy for a serious injury or illness suffered in the line of duty. A qualifying illness or injury may involve an aggravation of a pre-existing condition.

Where leave is sought to care for a veteran, the serious injury or illness must be one of the following:

- A continuation of a serious injury or illness that was suffered or aggravated when the veteran was a member of the Armed Forces and that rendered the individual unable to perform his or her duties;
- A physical or mental condition for which the veteran has received a Department of Veterans Affairs service-related disability rating of 50% or greater;
- A physical or mental condition that substantially impairs the covered veteran’s ability to work (or would do so absent treatment); or
- A physical or psychological injury due to which the veteran has enrolled in the Department of Veterans Affairs Comprehensive Assistance for Family Caregivers Program.

Separately, leave now may be taken to assist a service member’s parent who is incapable of self-care (if the need results from the service member’s active duty or call to active duty). Such leave is limited to non-routine activities, such as arranging for a parent’s care.

The new regulations also triple the number of days (from five to fifteen) a family member may take to bond with a service member on rest or recuperation leave. This leave may be taken intermittently.

Airline Flight Crew Eligibility

The new regulations include an alternate method for determining whether airline flight crew employees have worked sufficient hours to be eligible for FMLA leave. Such employees now qualify if they have worked or been paid for (i) at least 60% of the applicable total monthly guarantee (or its equivalent) and (ii) at least 504 hours (not including commuting or leave time) during the previous twelve months. Airline flight crew employees remain subject to the FMLA’s other eligibility requirements.

Tracking Intermittent Leave

Finally, the new regulations specify that an employer must track intermittent FMLA leave in the shortest increment the employer uses to account for other forms of leave. Thus, for instance, if an employer allows employees to take sick time in 15-minute increments, it must likewise allow employees to take intermittent FMLA leave in 15-minute increments. Significantly, an employer may not use a minimum increment greater than one hour.

Recommendations

Employers should: (a) revise their FMLA policies and forms as necessary to comply; (b) train their supervisors and managers to ensure that they understand the rights, obligations, and procedures implicated by the new regulations; and (c) display DOL's revised FMLA poster.



Lori Rittman Clark is Of Counsel at Schwartz Hannum PC, which represents management in labor and employment, business immigration, and education matters.