

Changes to the Family Medical Leave Act

HR UPDATE

By Erin Rian and Rebecca Hardel

The Department of Labor (DOL) has published final rules to the Family Medical Leave Act (FMLA), which took effect Jan. 16, 2009. The most significant changes involve new leave entitlements for military family members, employer notification requirements, and clarification on the medical certification process.

Military caregiver leave. Eligible employees who are the spouse, son, daughter, parent, or next of kin of covered servicemembers may take up to 26 workweeks of leave in a single 12-month period to care for a covered servicemember with a serious illness or injury incurred in the line of duty. A covered servicemember is a *current* 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.

Qualifying exigency leave. Eligible employees who have a covered military member (employee’s son, daughter, or parent) serving in the National Guard or Reserves will have up to 12 weeks of job-protected leave to use for “any qualifying exigency” arising out of the military member being on active duty or called to active duty status in support of a contingency operation. The definition of a qualifying exigency includes, but is not limited to, the following:

- Attending certain military events.
- Arranging for alternate childcare.
- Addressing certain financial and legal arrangements.
- Attending counseling sessions.

General employer notice. Employers must prominently post a general FMLA notice and include it in any written policies or handbooks if the employer has them. Otherwise, the notice must be distributed to new employees upon hire.

Notice of eligibility; rights and responsibilities. The employer must notify the employee within *five* business days (up from two days previously) of an employee’s request for FMLA leave whether he or she is eligible for such leave, and, if not, why not. The notice should also have a statement of rights and responsibilities, including:

- Leave may be counted against FMLA;
- Applicable 12-month period;
- Certification and/or documentation requirements (include appropriate forms);
- Employee’s right to substitute paid leave to run concurrently with FMLA (the employer may still require use of accrued leave); and
- Required employee premium payments to maintain health benefits.

Designation notice. Within *five* business days from receiving appropriate documentation or information to make a determination of FMLA leave, the employer must designate whether or not leave is FMLA leave. The employer must also indicate whether a fitness-for-duty certification will be required to return to work and a list of the essential functions of the job.

Medical certification. The final rules clarify issues about medical certification forms, and expand the number of certification forms from one to four. Medical certification includes the following:

- **Authentication and clarification.** The employer may request verification that the information was

completed or authorized by the health care provider. The employer may also contact the health care provider to clarify the handwriting or meaning of a response. No additional health information can be requested beyond what was asked on the certification form, and the employer must comply with privacy rules under the Health Insurance Portability and Accountability Act. Only a human resources professional, leave administrator, or management official may contact the health care provider (not the employee's direct supervisor).

- **Complete and sufficient information.** The employer must advise the employee when the certification is incomplete or insufficient, and state in writing what additional information is necessary. The employee has seven calendar days to provide the necessary information.
- **Fitness-for-duty certification process.** This process includes (1) The employer may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job; and (2) Where reasonable job safety concerns exist, the employer may require a fitness-for-duty certification before an employee may return to work when the employee takes intermittent leave.

Next steps and resources. All cities are subject to the FMLA requirements, but whether an employee is eligible for FMLA depends on several factors. Cities should review their FMLA policies, employee notification letters, and medical certification forms to be sure they comply with the new changes. You should also obtain updated posters to place throughout your building(s).

Updated forms and posters, as well as general information about the new FMLA regulations, can be found on the DOL web site at www.dol.gov/esa/whd/fmla. Questions can also be directed to the League's HR & Benefits Department at (800) 925-1122 or hr&benefits@lmc.org.

Erin Rian is HR manager with the League of Minnesota Cities. Phone: (651) 215-4095. E-mail: erian@lmc.org. Rebecca Hardel is HR project assistant with the League of Minnesota Cities. Phone: (651) 281-1217. E-mail: rhardel@lmc.org.

Reprinted with permission from *Minnesota Cities*, a publication of the League of Minnesota Cities, copyright 2009.

[Back To Story Page](#)