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LEGAL ALERT



Legal Alert: Reminder – Employers Must Comply with Revised FMLA Regulations

2/3/2009

The Department of Labor's significant revisions to the Family and Medical Leave Act ("FMLA") Regulations are now in effect and, to comply, most covered employers will need to revise their current policies and practices. Some of the important changes include:

- An employee may take up to 26 weeks of military caregiver leave during a single 12-month period on a per-covered servicemember, per-injury basis.
- An employee is permitted to take up to 12 weeks' leave for a qualifying exigency that is a non-medical activity that is directly related to a covered military member's active duty or call to active duty. Examples of "qualifying exigency" activities are: short-notice deployment; military events and related activities; certain temporary childcare arrangements and school activities; financial and legal arrangements; counseling by a non-medical counselor; rest and recuperation; and post-deployment activities.
- An employer must provide an Eligibility Notice to an employee who applies for FMLA leave, informing the employee of whether s/he is eligible for FMLA leave and containing specific information required by the new Regulations. DOL has prepared a prototype notice.
- The employer also must provide a Rights and Responsibilities Notice containing specific information required by the new Regulations each time an Eligibility Notice is required. DOL also has prepared a prototype Rights and Responsibilities Notice that is combined on the same form as the Eligibility Notice.
- Within five business days after the employer determines whether the leave is FMLA qualifying, it must provide the requesting employee with written notice either designating the leave as FMLA-qualifying or stating that the leave does not qualify as FMLA leave. DOL has developed a prototype Designation Notice.
- The existing poster and written FMLA policy requirements have been combined into one general notice requirement, which DOL has included in a prototype general notice. It must be posted in conspicuous places that are accessible to both applicants and employees. The employer must also distribute the notice to all employees by including it in a handbook (or other written materials) or by providing it to each new hire.
- There are new and updated DOL prototype forms for Military Exigency Leave, Military Caregiver Leave, and Certification of a Serious Health Condition of an Employee or Family Member.

If you have any questions regarding the new requirements, please contact the Ford & Harrison attorney with whom you usually work or the authors of this Alert, Kenneth D. Stein, kstein@fordharrison.com, 212-453-5900, Lori

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