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Rhode Island's new Family Military Leave Act requires Rhode Island employers to provide unpaid leave and reinstatement to qualifying spouses and parents of military servicemembers.

East Coast Edition

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New Rhode Island Law Grants Military Family Members Unpaid Leave

By George P. Kostakos and Stephen T. Melnick

On June 23, 2008, Governor Donald Carcieri signed into law the Family Military Leave Act (the "Act"), Rhode Island General Laws sections 30-33-1 to 30-33-6. The Act, effective when signed, offers a new right to unpaid leave for the family of servicemembers. Under the new law, spouses and parents of persons called into military service must be allowed time off and restored to an equivalent position at the conclusion of their leave.

Who Is Covered?

The Act applies to all Rhode Island employers with more than 15 employees and covers both employees and independent contractors. In order to qualify for leave under the Act, an employee must satisfy the same eligibility requirements as required under the federal Family and Medical Leave Act (FMLA) – that is, he or she must have worked for the employer for 12 months and must have 1,250 hours of service during the previous 12 months. The Act calls for leave for spouses and parents of persons called to military service, but not for children of servicemembers.

Family Military Leave Granted

Under the Act, leave is available to qualifying family members of persons called to military service lasting longer than 30 days. Eligible employees are allowed 15 days off if their employer has 15-50 employees and 30 days off if their employer has 51 employees or more. The leave can be taken any time while the servicemember's orders are in effect. (The Act does not state whether it applies to family members of servicemembers deployed prior

to its enactment.) The employee must first exhaust accrued vacation, personal leave or other time off (but not sick time or disability leave) before taking unpaid leave under the Act.

The employee must give the employer 14 days prior notice if the leave is expected to last for five or more consecutive workdays. If the leave is expected to last fewer than five days, the employee must give notice as soon as practicable. An employer can require that the employee provide certification from the military to verify the employee's eligibility.

An employee returning from family military leave has a right to job restoration with equivalent seniority status, benefits, pay and other terms and conditions of employment. An employer cannot interfere with an employee's rights under the Act or discriminate or retaliate against anyone who exercises or attempts to exercise such rights. Employees can sue to enforce their rights under the Act.

The employer must allow the employee to continue participating in its benefit programs at the employee's expense. The Act does not, however, require the employer to pay the employee's wages or to pay for benefits (such as life or health insurance) during the leave, although the employer may elect to do so.

The statute does not explicitly limit how often an employee may take the leave. Thus, it is possible that an eligible employee who is the parent or spouse of more than one deployed servicemember or of a servicemember who is deployed multiple times may be entitled to take more than one leave in a given year.

Comparison to New Federal Family Military Leave

Congress recently amended the FMLA to permit eligible employees to take leave in two new circumstances:

- Eligible employees can take up to 12 weeks of FMLA leave “for any qualifying exigency” if the spouse, son, daughter, or parent of the eligible employee is on active duty. (“Qualifying exigency” was not defined by the statute; that provision of the FMLA does not go into effect until the U.S. Department of Labor defines this term.)
- An employer must grant eligible employees up to a total of 26 weeks of unpaid leave during a 12-month period to care for a servicemember who has suffered a serious injury or illness in the line of duty.

Unlike the FMLA, the Rhode Island Family Military Leave Act allows leave to be taken any time the servicemember is deployed, regardless of injury or any other “exigencies.” Another significant difference between the FMLA and the Rhode Island Family Military Leave Act is that the latter also applies to independent contractors. In addition, the Rhode Island Family Military Leave Act applies to a smaller group of family members (as children of servicemembers are not included) and allows for a shorter leave period than the FMLA. Indeed, in many instances, leave granted under the Rhode Island Family Military Leave Act will run concurrently with and be exhausted before military leave taken under the FMLA.

Recommendations for Rhode Island Employers

Employers should review and, if necessary, amend their leave policies to reflect this new mandatory provision. Any employer with questions about employee leave rights should contact experienced employment counsel.

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