

EMPLOYMENT LAW ALERT

November 2009

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- Sexual Harassment Prevention
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- Employment At Will, Breach of Contract and Termination for Cause
- Employee Policy Manuals
- Family and Medical Leave
- Wage and Hour Requirements
- Employee vs. Independent Contractor
- Executive Employment Agreements and Severance Packages
- Comprehensive Litigation Services

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Important Update: Family and Medical Leave Act Amended

By: Jeffrey M. Schlossberg



On October 28, 2009, President Obama signed into law an amendment to the Family and Medical Leave Act (FMLA). The amendment expands coverage for family members of those in military service. The major changes are: 1) family members of active duty service members now qualify for military exigency leave (previously, it was limited to family members of those in the National Guard and Reserves); and 2) the conditions under which family members may take military caregiver leave were expanded.

Now, an employee whose spouse, son, daughter or parent is a member of any branch of the Armed Forces may take leave when the family member is deployed to a foreign country (expanding the law; it was previously limited only to those being deployed in support of a contingency operation).

The amendment also provides that military caregiver leave will now apply to injuries both incurred in the line of duty as well as any pre-existing conditions that may have been aggravated in the line of duty. Further, military caregiver leave is available to family members of veterans undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty so long as the veterans were members of the military within five years of receiving such treatment.

As a result of the passage of this new law, employers must update the required workplace posters and review and revise their FMLA leave policies (including handbooks) and forms to reflect the expanded coverage.

Because the new provisions took effect immediately upon being signed into law, updates should be done as soon as possible.

Previous Alerts

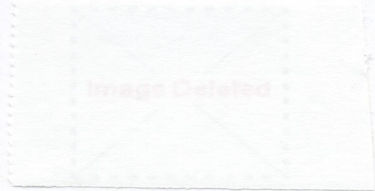
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Textual Harassment: Are You Prepared?

With the increasing popularity of text messaging, employers are beginning to receive complaints from employees who believe they are being subjected to workplace harassment as a result of unwanted text messages. How should employers handle this situation?

First, complaints of this nature should be treated no differently than comments made verbally or via email. Under the law, there is no distinction. If necessary, an appropriate investigation should be undertaken in accordance with the company's policy.

The more difficult question becomes: can an employer access an employee's cell phone to review the allegedly offending messages? The answer is, "it depends."

If the the company provides the cell phone and there exists a policy informing employees that communications on company equipment are subject to review, then the employer may access the messages.

However, if the cell phone belongs to the employee, the federal Stored Communications Act might make it unlawful (depending on the specific circumstances of the case) for an employer to access stored communications without the employee's authorization.

Despite the potential hurdles of accessing text messages, it remains the employer's obligation to ensure that the workplace is free from unlawful harassment. The fact that an employer may or may not be able to obtain copies of the messages should not prevent a full and appropriate investigation into the alleged offending conduct.

Text messaging may seem to be a harmless mechanism by which many communicate today. However, if the communication rises to the level of unlawful harassment, the employer may be liable. Companies should update their workplace harassment policies to include references to text messaging and provide training to instruct managers that such conduct is prohibited.

Next Month: Holiday parties and social networking -- an employer's primer to avoiding liability on these two timely topics.

If we can be of assistance on these or any employment law issues, please do not hesitate to contact us.

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