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EMPLOYERS TAKE NOTE:

Eight years after the U.S. Supreme Court held that the Department of Labor's (DOL) regulations concerning the Family Medical Leave Act (FMLA) were invalid, the Department has addressed concerns, revised regulations, and attempted to make handling FMLA requests more routine. Here's a summary of the most significant changes. A more complete description can be found on our website, www.millercanfield.com.

SERIOUS HEALTH CONDITION DEFINITION TWEAKED

Employers hoped for a narrower definition of "serious health condition." Not to be. While it acknowledged that employers face problems determining what constitutes such a condition, the DOL concluded it could not make material changes without taking away protections for those situations clearly meant to be covered. It did specify the meaning of certain terms ("treatment," "health care provider," for example), and set parameters for the time during which treatment must be received in order to qualify.

CHANGES TO LIMITS ON TIME CHARGED AGAINST FMLA LEAVE

An employer still cannot charge an employee for more FMLA than is needed (for instance, requiring a full day's leave if only three hours is requested). But some modifications were made. Employers may now track FMLA leave in the same increments used to calculate other time-off policies, such as vacation leave, but still cannot force an employee to take more than an hour at a time unless the employee also chooses to use paid leave. The DOL also clarified leave time for those employees whose work prevents them from using short time increments (a flight attendant who cannot take time off in the middle of a scheduled flight, for example).

COMP TIME CAN SUBSTITUTE

New regulations allow a public employer to coordinate compensatory time off with FMLA leave for employees like firefighters and police officers.

ATTENDANCE AND PRODUCTION INCENTIVES AFFECTED

An employer is permitted to deny a bonus to an employee using FMLA leave when a specified goal (hours worked, products sold, perfect attendance, etc.) is not met, as long as the bonus is also denied to other employees on an equivalent leave status.



Changes, clarifications issued for the Family Medical Leave Act

FORMS AND NOTICES ARE TIGHTENED

Regulations now set strict time tables and require extensive forms. Because they are complex, employers should carefully review the new DOL forms and consult with counsel where appropriate.

NEW POLICIES COVER CARE OF FAMILY MEMBER INJURED IN MILITARY SERVICE

An employee can now take time to care for a family member injured while serving in the military. The FMLA extends to a parent, spouse, child, or next of kin; and the leave may be for up to 26 weeks within a 12-month period. The amendments also define "serious injury or illness" as applied in such cases.

FMLA NOW INCLUDES "QUALIFIED EXIGENCIES"

The amendments extend FMLA leave for a parent, spouse, or child of an individual called to active military service with the National Guard or Reserves. The leave is limited to 12 weeks per year. The regulations identify circumstances for which the leave can be taken and set time periods for each. Included in the list of "qualified exigencies" are short-term deployment, military events, childcare and school activities, legal appointments, counseling, post-deployment activities, rest and recuperation, and other activities which may arise out of the call to active duty.

Space prevents a thorough description of FMLA changes in this issue of Hot Points. Please call the author or refer to the article on our website for additional information.

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