

Labor Law Bulletin

Labor and employment law trends
of interest to our clients and other friends

February 4, 2008

FMLA Now Permits Time Off for Family Members of Military Personnel

Effective January 28, 2008, the Family and Medical Leave Act (FMLA) was amended to provide protected leave for employees who need time off to handle “exigencies” related to an immediate family member’s military service or call-up for service, and to care for a family member who is injured during military service.

Who is entitled to this leave?

- Only employees who are otherwise covered by the FMLA.

When and how much leave can be taken?

- **Active Duty Leave.** An employee whose spouse, child or parent has been called to active duty or is already on active duty is entitled to take up to 12 workweeks of leave during any 12-month period because of a “qualifying exigency.” Incredibly, the term “qualifying exigency” is not defined in the law, and awaits regulatory definition by the Secretary of Labor. However, it is likely that an “exigency” will include time needed to assist the serviceperson to get ready for duty or to care for his/her child. It remains to be seen whether it will allow an employee to take time off while a serviceperson is on furlough. An employee must provide reasonable notice to the employer of a foreseeable leave. The law requires certification in support of the leave, but the details are left to the Secretary of Labor to decide.
- **Caregiver Leave.** An employee whose spouse, child, parent or “next of kin” is injured while on active military duty can take up to 26 workweeks of leave during a single 12-month period to care for him or her. The maximum amount of FMLA time an employee may take for any combination of FMLA-qualifying reasons during a 12-month period is 26 weeks. Although not clear, it appears that an employee may split the 26 weeks to care for multiple family members, so long as the maximum amount of leave does not exceed 26 weeks in a 12-month period. The existing healthcare certification rules apply to this type of leave.

Can intermittent leave be taken?

- Yes, for both types of leave.

Is the leave paid or unpaid?

- Unpaid. However, the same rules now applicable to substitution of paid leave apply to these leaves.

What should employers do now?

- Until the regulations are issued, employers have been advised by the Department of Labor to “act in good faith” in providing leave under the new amendments. Employee requests for time off related to a family member’s military service should be handled with caution. Once the regulations are announced, employers should be prepared to revise their FMLA policies and forms to include these new types of protected leave.

The text of the new amendments can be found at <http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm>. If you have any questions, please contact Bruce R. Alper (312/609-7890), Elizabeth N. Hall (312/609-7795), or any Vedder Price attorney with whom you have worked.

VEDDER PRICE P.C.

Vedder Price P.C. is a national, full-service law firm with over 250 attorneys in Chicago, New York, Washington, D.C. and New Jersey. The firm combines broad, diversified legal experience with particular strengths in labor and employment law and litigation, employee benefits and executive compensation law, occupational safety and health, general litigation, corporate and business law, commercial finance, financial institutions, environmental law, securities, investment management, tax, real estate, intellectual property, estate planning and administration, health care, trade and professional association and not-for-profit law.

© 2008 Vedder Price P.C. The *Labor Law Bulletin* is intended to keep our clients and interested parties generally informed on labor law issues and developments. It is not a substitute for professional advice. For purposes of the New York State Bar Rules, this Bulletin may be considered ATTORNEY ADVERTISING. Prior results do not guarantee a similar outcome. Reproduction is permissible with credit to Vedder Price.

Questions or comments concerning the Bulletin or its contents may be directed to the firm’s Labor Practice Leader, Bruce R. Alper (312-609-7890), or the Managing Shareholder of the firm’s New York office, Neal I. Korval (212-407-7780), in Washington, D.C., Theresa M. Peyton (202-312-3360) or, in New Jersey, John E. Bradley (973-597-1100).

Chicago
222 North LaSalle Street
Chicago, Illinois 60601
312-609-7500
Fax: 312-609-5005

New York
1633 Broadway, 47th Floor
New York, New York 10019
212-407-7700
Fax: 212-407-7799

Washington, D.C.
875 15th Street NW, Suite 725
Washington, D.C. 20005
202-312-3320
Fax: 202-312-3322

New Jersey
Five Becker Farm Road
Roseland, New Jersey 07068
973-597-1100
Fax: 973-597-9607