

Summary of recent changes to the Family and Medical Leave Act

(This document is not all inclusive and is only intended to briefly summarize the recent key changes to the FMLA)

January 16, 2009

On January 28, 2008, President Bush signed the National Defense Authorization Act for Fiscal Year 2008 into Law. The Law included provisions expanding the federal Family and Medical Leave Act to guarantee job-protected leave in certain circumstances for employees who are family members of active duty personnel (Family Member Military Leave). The new regulations described in the law took effect on January 16, 2009.

Family Member Military Leave (qualifying exigency and medical caregiver leave):

A. Qualifying Exigency Leave:

Eligible family members will be entitled to take up to 12 weeks of FMLA leave for “qualifying exigencies” arising out of a covered military member’s active duty status, or call to active duty, in support of a contingency operation.

The final FMLA regulations created seven general categories for a “qualifying exigency” leave. They are:

1. Issues arising from a covered military member’s short notice deployment (7 or less days of notice).
2. Military events and related activities, such as official ceremonies, programs or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military.
3. Certain childcare related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non routine, urgent immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility.
4. Making or updating financial and legal arrangements to address a covered military member’s absence.

5. Attending counseling sessions provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member.
6. Taking up to five days of leave to spend time with a covered military member during their temporary, rest and recuperation leave.
7. Attending to certain post deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of up to 90 days following the termination of the covered military members active duty status and dealing with issues arising from the death of a covered military member.

B. Military Caregiver Leave

1. Eligible employees are entitled to take up to 26 weeks of job protected leave in a 12-month period to care for a covered service member with a serious illness or injury incurred in the line of active duty.
2. In order to be eligible for military caregiver leave, an employee must be the spouse, son, daughter, parent or next of kin of a covered service member who is receiving treatment for a serious injury or illness. At the time of the injury or illness, the service member must have been in the line of duty on active duty, and the service member must have an illness or injury that renders the member medically unfit to perform his or her duties. This type of leave is not available to care for former members of the Armed forces, former members of the National Guard and Reserves, and members on the permanent disability retired list.

- C. The 2009 revisions to the Family Medical Leave Act (FMLA) allows public employees to substitute compensatory time for unpaid FMLA leave. (It is the employee's decision to use accrued leave balances concurrently with FMLA; an employer may not require an employee to utilize accrued compensatory time balances while on approved FMLA).

The State Controller's Office developed the following earnings codes to reflect these changes:

FMC: Family and Medical Leave-Comp Time

FSC: Service Member Family Leave-Comp Time

(Employees on FMLA who concurrently use compensatory time (FMC or FSC) do not accrue sick and vacation leave credits).

October 28, 2009

President Obama signed the Fiscal Year 2010 National Defense Authorization Act (NDAA), a federal law that is enacted each fiscal year to specify the budget and expenditures of the United States Department of Defense. The 2010 NDAA contained two expansions under the Family and Medical Leave Act.

1. The new law extended coverage for exigency leave to active duty military personnel and their families. (The prior law only applied to members of the National Guard and Reserves).
2. The new law also made changes to the military service member caregiver leave provisions of the Family and Medical Leave Act. The new legislation entitled employees to take up to 26 weeks of FMLA leave to care for a family member who is a service member or veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran underwent that medical treatment, recuperation, or therapy. Pervious to this change, the 26 weeks of leave applied to employees caring for active military service members only and not veterans.