

FACT SHEET: FINAL RULE TO IMPLEMENT STATUTORY AMENDMENTS TO THE FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act (FMLA) was amended by the National Defense Authorization Act for Fiscal Year 2010 (FY 2010 NDAA) to expand the FMLA's military family leave provisions, and by the Airline Flight Crew Technical Corrections Act (AFCTCA) to incorporate a special eligibility provision for airline flight crewmembers and flight attendants. The Department issued a Final Rule implementing and interpreting these statutory amendments and making some additional clarifying changes.

The FMLA entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. An eligible employee may take up to 12 workweeks of FMLA leave in a 12-month period for the birth of a child or the placement of a child for adoption or foster care; to care for the employee's spouse, son, daughter, or parent with a serious health condition; or for the employee's own serious health condition. See [Fact Sheet #28: The Family and Medical Leave Act - Overview](#) for further information about the FMLA.

The FMLA was amended by the National Defense Authorization Act for Fiscal Year 2008 to add two special military family leave entitlements: (1) to permit an eligible employee who is the spouse, son, daughter, parent, or next of kin of a current servicemember with a serious injury or illness incurred in the line of duty on active duty to take up to 26 workweeks of FMLA leave during a single 12-month period to care for the servicemember (military caregiver leave); and (2) to allow an eligible employee whose spouse, son, daughter, or parent is a member of the National Guard or Reserves to take up to 12 workweeks of leave for qualifying exigencies arising out of the military member's active duty or call to active duty in support of a contingency operation (qualifying exigency leave).

2010 Amendments to the Military Family Leave Provisions

The FY 2010 NDAA expanded the military caregiver leave provision to entitle an eligible employee to take leave to care for certain veterans with a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty, and to allow military caregiver leave for current servicemembers with a serious injury or illness that existed prior to service and that was aggravated by service in the line of duty on active duty. The FY 2010 NDAA also expanded the qualifying exigency provision to entitle an eligible employee whose spouse, son, daughter, or parent is a member of the Regular Armed Forces to take qualifying exigency leave, and added a foreign deployment requirement for qualifying exigency leave for all military members (National Guard, Reserves, and Regular Armed Forces).

Highlights of the Final Rule changes to the military family leave provisions include:

- **Expansion of the definition of a covered servicemember to include certain veterans.** The Final Rule expands the 26-workweek military caregiver leave provision to include leave to care for covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty.
- **Definition of a covered veteran.** The Final Rule defines a covered veteran as a veteran who has been discharged or released under conditions other than dishonorable within the five-year period preceding the date the employee first takes military caregiver leave to care for the veteran. For a veteran who was discharged before March 8, 2013 (the effective date of this Final Rule), the rule excludes the period of time between October 28, 2009 (the FY 2010 NDAA's enactment date) and March 8, 2013 in calculating the veteran's five-year period. [Definition of serious injury or illness of a covered veteran](#). Covered veterans may qualify as having a serious injury or illness for military caregiver leave under one of four definitions set forth in the Final Rule.
- **Inclusion of pre-existing injuries or illnesses aggravated in the line of duty on active duty.** The Final Rule expands military caregiver leave to cover current servicemembers with serious injuries or illnesses that existed before the servicemember's active duty but were aggravated by service in the line of duty on active duty.
- **Expansion of health care providers authorized to certify a current servicemember's or veteran's serious injury or illness.** The Final Rule expands the list of health care providers who can provide a medical certification to support FMLA military caregiver leave to include health care providers who are not affiliated with the military. If a medical certification is obtained from a non-military affiliated health care provider, the employer may request a second (or third) opinion from the employee. The Final Rule retains the provisions that healthcare certifications obtained from healthcare providers associated with the military may not be subject to second and third opinions.
- **Expansion of qualifying exigency leave for employees with family members in the Regular Armed Forces.** The Final Rule expands the qualifying exigency leave entitlement to employees whose spouse, son, daughter, or parent serve in the Regular Armed Forces, and incorporates the statutory requirement that the military member, whether in the Regular Armed Forces or the Reserve components, must be deployed to a foreign country.

- **Certain changes to the categories of qualifying exigency leave**, including:
- Increasing the amount of time an eligible employee may take qualifying exigency leave related to the military member's Rest and Recuperation to a maximum of 15 calendar days. This leave may only be used while the military member is on Rest and Recuperation leave.
- Creating a new qualifying exigency category that allows an eligible employee to take FMLA leave for certain activities related to the care of the military member's parent who is incapable of self-care where those activities arise from the military member's deployment or impending deployment, such as arranging for alternate care for the parent; providing care for the parent on an urgent, immediate need basis; admitting or transferring the parent to a care facility; and attending certain meetings with staff at a care facility.

Airline Flight Crew Amendments

Employees are eligible for the protections of the FMLA if they work for a covered employer, have worked for the employer for at least 12 months, meet the hours of service requirement, and work at a location where the employer has at least 50 employees within 75 miles. The AFCTCA enacted in December 2009, amended the FMLA to create a special hours of service eligibility provision for airline flight crewmembers and flight attendants (as those terms are defined by the Federal Aviation Administration). The amendment also authorized the Secretary of Labor to develop a method for calculating leave usage by airline flight crews.

The Final Rule includes a new Subpart H to address all special provisions relating to airline flight crewmembers and flight attendants (collectively referred to in the Final Rule as airline flight crew employees) to enhance the clarity and utility of the regulations applicable to this specific group of employees. This new subpart includes:

- **Special hours of service eligibility requirement.** Airline flight crew employees will meet the hours of service eligibility requirement if they have worked or been paid for not less than 60 percent of the applicable total monthly guarantee and have worked or been paid for not less than 504 hours during the 12 months prior to their leave.
- **Special method of calculation of leave.** An airline flight crew employee is entitled to 72 days of leave during any 12-month period for FMLA-qualifying reasons other than military caregiver leave and 156 days of leave during a single 12-month period for military caregiver leave. The Final Rule also provides that, if an airline flight crew employee takes leave intermittently or on a reduced schedule, the employer must account for the leave using an increment no greater than one day.

Other Provisions of the Final Rule

- **Calculation of leave for intermittent or reduced schedule.** The Final Rule makes clarifying edits to the provisions concerning the "varying increments" rule, which allows employers to utilize different increments of leave at different times of the day or shift, provided the employer tracks FMLA leave using the smallest increment used for other forms of leave subject to a one hour maximum. The Final Rule also makes clarifying edits to the provisions concerning the minimum increments, and the physical impossibility rules. The Department made no substantive changes to these provisions.
- **Uniformed Services Employment and Reemployment Rights Act (USERRA) protections.** The Final Rule makes clear that protections afforded by the USERRA extend to all military members (Regular Armed Forces and National Guard and Reserves) returning from USERRA-covered service, and that these provisions apply to an absence from work due to any service covered by the USERRA.
- **Definitions.** The definitions section is relocated to the beginning of the regulations to enhance the usability of the regulations.
- **FMLA optional-use forms.** The FMLA optional-use forms and general notice poster are removed from the Appendices to the regulations. These forms are also updated to reflect the statutory and regulatory changes to the FMLA. A new optional-use form, Form WH-385-V, is created for certification of a serious injury or illness of a covered veteran.

The full text of the FMLA Final Rule can be found [here](#).

For additional information on the FMLA, including information on the military family leave entitlements, please visit www.dol.gov/agencies/whd/fmla.

For Information on the effective date, click [here](#).

Military caregiver leave for a veteran will not be available until the effective date of the Final Rule on March 8, 2013