

## **Family and Medical Leave**

In last month's newsletter, we covered the complexities of various provisions of the Federal Family and Medical Leave Act (FMLA), the Vermont Parental and Family Leave Law (VPFL), and Vermont's Short-Term Family Leave. This article will expand on the FMLA to address the 2008 and 2010 National Defense Authorization Act (NDAA) amendments that provide expanded rights and additional coverage for members of the military.

To review, the provisions of the FMLA of 1993 entitle eligible employees up to 12 weeks of unpaid leave in a 12-month period for the following:

- the birth or adoption of a child;
- the employee's inability to work due their own serious health condition; or
- time needed to care for a close family member with a serious health condition.

The NDAA has amended the FMLA to provide coverage for two Military Family Leave Entitlements: Exigency Leave and Military Caregiver Leave.

### **Qualifying Exigency Leave**

The 2008 and 2010 amendments to the FMLA provide an eligible employee up to 12 weeks of leave in a 12-month period if the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty," or has been notified of an impending call. This leave is available to a family member of a military member in the National Guard or Reserves. Events considered qualifying exigencies include:

- an issue due to a short notice deployment,
- military events or activities,
- arranging child care needs,
- making financial and legal arrangements,
- attending counseling, and
- time for post-deployment activities.

### **Military Caregiver Leave**

Further, the 2008 and 2010 amendments provide entitlement to 26 weeks of caregiver leave during a 12-month period to care for a covered service member with a serious injury or illness. The care must be for a spouse, son, daughter, parent, or next of kin. This includes a veteran "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" within a period of five years following active duty.

The U.S. Department of Labor created a comprehensive FMLA fact sheet, which can be found online at [www.dol.gov/whd/regs/compliance/whdfs28.htm](http://www.dol.gov/whd/regs/compliance/whdfs28.htm). A fact sheet, forms for employers to use in documenting use of the FMLA Military Family Leave Entitlements, and other guidance are at [www.dol.gov/whd/regs/compliance/whdfs28a.htm](http://www.dol.gov/whd/regs/compliance/whdfs28a.htm).

An employee's time on military leave counts as time worked toward meeting the 12 months of employment eligibility requirement for FMLA, something to consider for a recent hire who starts military leave within the first year of employment.

As with most employment laws, it helps to examine the intention of these regulations. Calling up a military member to duty can put substantial demands on his or her family members as they prepare for the absence. Likewise, a military member's serious injury or illness can be traumatic for his or her family. The amendments to the FMLA provide employment security and protect employees from retaliation if they need and use this leave time.

**Points on administering:**

- Handle employee situations consistently. Document and track the time.
- Use a standardized form or other recordkeeping to document the leaves.
- Employees may be paid available benefit time *concurrently* with their leave.
- The statutes do not require the employer to pay during the leaves; the employee may choose to be paid *available* benefit time in accordance with the employer's policies.
- Benefits must remain in force as if the employee were still working. The employee has to pay any contribution normally required of him or her.
- In most cases, the leave may be taken intermittently. This requires the employer to keep detailed records.
- The employee is obligated to provide 30 days advance notice of the need for the military-related leave, but that may be reduced due to circumstances.

An employer's thorough understanding of the laws, consistent application of policies and practices, and detailed recordkeeping can help keep the situation agreeable for the employer, the employee, and the service member.

***VLCT Newsletter, March, 2011***

Brian Nolan

Director, Human Resources