

PUBLICATION

DOL Releases Final Rule for FMLA Changes for Airline Crews, Military Caregivers

February 18, 2013

The Department of Labor (DOL) published a Final Rule implementing the changes to the Family and Medical Leave Act (FMLA) made by the 2010 National Defense Authorization Act (NDAA) and the Airline Flight Crew Technical Corrections Act (AFCTCA). The AFCTCA amended the FMLA to incorporate a special eligibility provision for airline flight crew members and flight attendants.

The NDAA amended the FMLA's military caregiver leave provision to permit eligible employees 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, which manifested before or after the veteran left active duty, and to allow military caregiver leave for current service members 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 NDAA also expanded the qualifying exigency provision to permit eligible employees to take qualifying exigency leave for covered family members in the Regular Armed Forces and added a foreign deployment requirement for qualifying exigency leave for all military members (National Guard, Reserves and Regular Armed Forces).

The DOL's Final Rule implements and interprets these amendments and makes certain additional clarifying changes. Some of the more significant provisions include:

- Clarifying that while the qualifying exigency leave provision of the 2010 NDAA was made effective on October 28, 2009, the military caregiver leave provision to care for a covered veteran does not take effect until the effective date of the Final Rule (March 8, 2013). Thus, any leave to care for a veteran voluntarily provided by an employer before March 8, 2013, that does not otherwise qualify as FMLA leave is neither FMLA-protected nor does it count against an employee's FMLA entitlement.
- Defining "covered veteran" as a veteran discharged or released under conditions other than dishonorable within the five-year period prior to the date the employee's military caregiver leave began.
- Clarifying that, for a veteran who is discharged before March 8, 2013, the five-year period excludes the period of time between October 28, 2009 (the 2010 NDAA's effective date) and March 8, 2013.
- Providing four alternatives for the definition of serious injury or illness of a covered veteran, only one of which must be met.
- Increasing the amount of time an employee can 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 permits an eligible employee to take FMLA leave for certain activities relating to the care of a military member's parent who is incapable of self-care, when the care is necessitated by the covered active duty of a military member. The Final Rule was published in the [February 6, 2013, issue](#) of the Federal Register. If you have questions about how this new rule may affect your employees and their FMLA leave, please contact any of our more than 70 Labor & Employment attorneys located in [Birmingham, Alabama](#); [Atlanta, Georgia](#); [Baton Rouge, Mandeville](#) and [New Orleans, Louisiana](#); [Jackson, Mississippi](#); [Chattanooga, Johnson City, Knoxville, Memphis](#) and [Nashville, Tennessee](#); and [Houston, Texas](#).

