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New FMLA Rule Expands Military Family Leave and Airline Flight Crew Rules

The Department of Labor (DOL) is issuing a notice of proposed rule-making to implement new statutory amendments to the Family and Medical Leave Act (FMLA) that would expand military family leave provisions and incorporate a special eligibility provision for airline flight crew employees.

The FMLA, enacted in 1993, entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons. Eligible employees may take up to twelve workweeks of FMLA leave in a 12-month period for the birth, adoption or placement of a child, to care for a family member with a serious health condition, or because they are unable to work due to their own serious health condition. The FMLA was amended in 2008 to provide an expanded leave entitlement to permit eligible employees who are the spouse, son, daughter, parent, or next-of-kin of a service member (National Guard, Reserves, or Regular Armed Forces) with a serious injury or illness incurred in the line of duty to take up to twenty-six workweeks of FMLA leave during a single 12-month period to care for a family member (military caregiver leave), and to add a special military family leave entitlement to allow eligible employees whose spouse, child, or parent is called up for active duty in the National Guard or Reserves to take up to twelve workweeks of FMLA leave for "qualifying exigencies" related to the call-up of their family member (qualifying exigency leave).

The proposed language would extend the entitlement of military caregiver leave to family members of veterans with serious injuries or illnesses for up to five years after leaving the military. At this time, the law only covers family members of "currently serving" service members. Additionally, the proposal expands the military family leave provisions of the FMLA by extending qualifying exigency leave to employees whose family members serve in the regular armed forces. Currently, the law only covers families of National Guard members and reservists.

For airline flight crew employees, the proposed revision makes the benefits of the FMLA more accessible. It would add a special hours of service eligibility requirement for them based on the unique scheduling requirements of the airline industry. It also adds specific provisions for calculating the amount of FMLA leave used that better take into account the unique — and often difficult to track — hours worked by crew members.

The major provisions of the new rule include:

- the extension of military caregiver leave to eligible family members of recent veterans with a serious injury or illness incurred in the line of duty;
- a flexible, three-part definition for serious injury or illness of a veteran;
- the extension of military caregiver leave to cover serious injuries or illnesses for both current servicemembers and veterans that result from the aggravation of a preexisting condition during military service;
- the extension of qualifying exigency leave to eligible employees with covered family members serving in the Regular Armed Forces;
- inclusion of a foreign deployment requirement for qualifying exigency leave for the deployment of all service members (National Guard, Reserves, Regular Armed Forces);
- the addition of a special hours of service eligibility requirement for airline flight crew employees; and
- the addition of specific provisions for calculating the amount of FMLA leave used by airline flight crew employees.

All interested parties are invited to submit written comments on the proposed rule during the open comment period at www.regulations.gov. More information is available at the Wage and Hour Division's [Proposed Rule Website](#). For additional information on the FMLA, including information and fact sheets on the proposed revisions, visit <http://www.dol.gov/whd/fmla/>.

Should you have questions about these provisions, contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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