

**NEW FMLA REGULATIONS:  
Complying with Additional Requirements**

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On November 17, 2008, the U.S. Department of Labor, published a revised set of regulations implementing the Family and Medical Leave Act ("FMLA"). These revisions represent the first significant modifications to the FMLA regulations, since the law was first enacted in 1993. The regulations take effect January 16, 2009. Many Districts may not be aware of the pending change, and many more may be unaware of how the new regulations will affect their FMLA process. This article is meant to raise awareness of the changes, and the need for districts to review the new regulations prior to their implementation. Districts should conduct a thorough review of these new regulations or seek guidance from their counsel in order to obtain compliance with the new regulations.

The new regulations provide two main areas of concern for districts. The first issue is a substantial revision of the notice process. The new regulations revamp the notice requirements, keeping some of the notices, changing others, and adding new notices to be provided. The following is a brief review of the four types of notices that may be required under the FMLA:

**1. General Notice:** In addition to the general poster, Districts must now personally inform its employees of their rights under the FMLA, which may be provided via an employee handbook.

**2. Eligibility Notice:** The eligibility notice must be provided to employees whenever the need for FMLA leave may arise. Under the new rules the Eligibility Notice must be provided within five business days of the triggering event listed above.

**3. Rights & Responsibilities Notice:** Whenever a District issues an Eligibility Notice, it must also issue a Rights & Responsibilities Notice. This Notice explains the same basic issues as are provided in the General Notice, but must still be provided along with each Eligibility Notice.

**4. Designation Notice:** Districts must notify an employee whether or not an employee's leave has been designated as FMLA leave within 5 business days of receiving sufficient information to make a determination. For example, the district must notify the employee within five business days after the district receives the completed medical certification back from the employee and is, therefore, able to determine whether the leave is requested for an FMLA-qualifying reason.

The Department has created sample forms for all four of the notices, which contain all the necessary information. Districts are not required to use the sample forms, so long as their own forms contain the same information as the samples.

5. Summary of Notice Procedure: Whenever a potential FMLA leave situation arises, regardless of how the issue is raised, districts are obligated to provide the employee with an Eligibility Notice, which informs the employee if he or she initially qualifies for FMLA leave. Along with the Eligibility Notice, the district must also provide a Rights & Responsibilities Notice at the same time, which further explains the FMLA process to the employee. Finally, the district must issue the Designation Notice, informing the employee if the leave will be designated as FMLA leave. Depending on the circumstances, the Designation Notice may be provided at the same time as the Eligibility and Rights & Responsibilities Notices, or may be provided later, depending on employee's ability to completely and sufficiently fill out any required information, such as the applicable certification documents.

Additionally, Congress recently created two new types of leave related to the armed services: 1) military caregiver leave and 2) active duty leave. These new types of leave must be incorporated into all district policies and forms. As these are two new areas of FMLA leave, we advise all districts to review these new categories with all administrators responsible for coordinating FMLA leave.

1. Military Caregiver Leave: Family members may take up to **26 weeks** of leave during a 12-month period to care for a service member who has incurred a serious injury in the line of duty, while on active duty. Significantly, this type of leave is only available to those caring for *active* duty military personnel. The rules specifically prohibit an employee to use this new leave to care for a *former* member of the military.

The principal difference with this type of leave is it entitles eligible employees to up to **26 weeks** of leave in a "single 12-month period," which must be measured from the time the employee first takes the leave, regardless of how the district otherwise tracks FMLA leave entitlement. Significantly, any unused leave at the end of the 12-month period will be forfeited.

Employees may take a combination of Military Caregiver Leave and other FMLA leave in the 26-workweek period (but may not take more than 26 weeks of leave regardless of the types of leave taken). These new requirements will mandate additional tracking obligations to ensure compliance.

2. Active Duty Leave: permits an employee to take up to 12 weeks of leave because a spouse, child, or parent is on duty or has been notified of an impending call to duty in the **Reserves or National Guard**. This leave is unavailable to employees with family serving in the *Regular Armed Forces*.

This new leave may be used for any of the following broad areas of activities:

- Short-notice deployment
- Military events and related activities
- Childcare and school activities
- Financial and legal arrangements
- Counseling
- Rest and recuperation
- Post-deployment activities
- Additional activities agreed upon by the employer and employee

While the Notice changes and the new military leaves are the major changes to the FMLA regulations, a number of other areas have also been modified as well. We would strongly encourage all administrators responsible for the management of employee leave to familiarize themselves with these new changes. Particularly with respect to the notice obligations, districts will be required to immediately change the compliance process. New forms will need to be created, or previous forms modified. Additionally, district policies will need to be updated where required to conform to these new requirements. Finally, to ensure compliance, training may be required to ensure all administrators and/or employees responsible for coordinating employee leave are familiar with and properly implement the new changes. Anyone with specific questions on FMLA compliance should contact their counsel.