

## NBCG Industry Insights January 2009

An e-newsletter highlighting Industry events and trends

### Highlights of New Family & Medical Leave Act Regulations

Dear Valued Client:

On January 16th, the first amended regulations to the Family Medical Leave Act since its passage in 1993 go into effect. In addition, as noted in a prior NBCG Industry Insights bulletin, there are two new leaves that impact family members of those serving in the military: Leave because of a qualifying exigency and Military Caregiver Leave. Here's a summary of all recent FMLA changes we felt were important:

#### The Amended Regulations

The amended regulations are largely administrative and address some of the many confusing aspects of the FMLA which have made it a nightmare for employers. Some examples include:

- **Time periods and treatment parameters under "Serious Health Condition":** The section defining Serious Health Condition now clarifies that treatment two or more times by a health care provider must take place within a 30-day period. For chronic conditions requiring periodic visits for treatment, such visits must take place at least twice a year.
- **Intermittent leave:** This has been difficult to track for many employers and the FMLA has been unclear about how to do it. The new regulations clarify that the employer must account for intermittent leave "using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour". Also, employers are allowed to have their own rules with regard to tracking other leaves such as vacation and paid-time-off.
- **Clarifications on bonus rules:** The section on bonuses has been revised to allow an employer to disqualify an employee from any bonus or award predicated on achievement of a goal that the employee fails to achieve due to his or her FMLA absences. However, disqualification must apply to all forms of leave. This change is a response to employee and employer complaints of unfairness in the awarding of "perfect attendance" bonuses to employees absent due to FMLA.
- **Changes aimed at improving employer-employee communication:** A comprehensive section has been added to the FMLA that outlines in detail exactly when employers have to give employees various notices. This section also adds provisions requiring that employees must respond to employers' requests for information as well as must comply with the company's usual notice and procedures for requesting leave.
- **Certification and recertification:** In the past, employers have not been permitted to contact the employee's healthcare provider (HCP) to obtain clarification or verification about an employee's request for leave. Now, the employer may contact the HCP using a health care professional, HR professional, leave administrator or management official, but must not use the employee's direct supervisor. (Note that this does not include obtaining additional medical information.) Also, the employer may request recertification every 6 months in connection with an absence and in some limited cases an employer can seek recertification is less than 30 days.

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### New FMLA Change Highlights (Cont.)

#### New Military Leave Provisions

There are two major additions to the FMLA that applies to employees who have family members serving in the armed forces:

- **Military caregiver leave:** This leave allows an eligible employee who is the spouse, son, daughter, parent or next of kin of a "covered servicemember" to take 26 workweeks (additional 14 weeks to the original 12 week entitlement) of leave during a 12-month period to care for the servicemember with a serious health condition or injury incurred in the line of active duty.
- **Leave because of a qualifying exigency:** This leave is designed to help families of members of the National Guard and Reserves manage their affairs while the member is on active during in support of a contingency operation. Employees who qualify for Family Medical Leave may use up to 12 weeks. There are seven categories of reasons for leave: 1) short-notice deployment; 2) military events and activities, 3) childcare and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities plus additional activities which arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.

Naturally, the new regulations include four new certification forms and additional notices. Note that the only additional time employees may take for Family Medical Leave is the 14-week extension allowed under Military Caregiver Leave.

This is just a brief highlight of some of the changes. There are many others and we will attempt to keep you up-to-date on those we feel are most relevant. For more information about FMLA changes, please visit the U.S. Department of Labor website at [www.dol.gov](http://www.dol.gov). If you should have additional questions, do not hesitate to contact your NBCG Benefits Consultant.

Warm Regards,

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