

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE
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New FMLA Rules: Update Your Policies

On January 16, 2009, new regulations from the Department of Labor (“DOL”) interpreting the Family and Medical Leave Act (“FMLA”) take effect. The regulations cover new rights created by Congress related to leave for military injuries and family obligations, and they clarify and amend certain details of traditional FMLA leave rights.

Newly added are rules on employees’ rights to take FMLA leave to care for their own or their spouse’s, son’s, daughter’s, parent’s or next of kin’s serious injury or illness incurred during military duty. An employee is entitled to 26 weeks of such FMLA leave in a single 12-month period. Even where there is no injury or illness necessitating leave, a non-medical “exigency” caused by a family member’s service in the National Guard or the Reserves will entitle an employee to leave (limited to the ordinary 12 weeks). What constitutes an “exigency” will likely be debated going forward, but the Department of Labor has already specifically identified *short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, and rest and recuperation*.

The remaining amendments and clarifications relate to a range of FMLA details too specific for quick summary. Most significantly, though, the DOL has created new forms for employers to use in notifying employees of their FMLA rights, responding to requests for FMLA leave, obtaining certifications from health care providers and gathering return-to-work information.

Having spent years developing the new regulations and drafting the new forms, the DOL has indicated that it will be less sympathetic to an employer’s claim of innocence when mistakes are made administering FMLA leave. Stepped-up enforcement actions might not be far behind—all of which makes education on the new rules a priority for the beginning of 2009.

TIP

Employers should review the new DOL regulations and, as necessary, amend policies and procedures to insure compliance. Pay particular attention to the new forms issued with the regulations. Smith Moore Leatherwood will provide more information on how to use those forms in our next TIP.

Stay up to date on the new FMLA regulations at www.theinsideperspective.com.



TIP Author - Jason Nutzman
Smith Moore Leatherwood LLP
Labor and Employment Team
Greenville Office

Labor and Employment Team Members

Allen Buckley	(404) 962.1042	Richard McDuff	(864) 240.2461
Laura Deddish Burton	(336) 378.5566	Francesca Mostellar	(864) 240.2415
Will Burton	(336) 378.5421	Jason Nutzman	(864) 240.2430
Denise Smith Cline	(919) 755.8734	Jerry Oliver	(919) 755.8710
Martin Erwin	(336) 378.5327	Patti Ramseur	(336) 378.5304
Will Jordan	(864) 240.2431	Barbara Ruby	(336) 378.5294
Mike Kelly	(336) 378.5336	Peter Rutledge	(864) 240.2410
Caroline Lock	(336) 378.5341	Beth Brooks Scherer	(919) 755.8790
Travis Martin	(336) 378.5277	Julie Theall	(336) 378.5256
Alex Maultsby	(336) 378.5331	Jeri Whitfield	(336) 378.5270
Duke McCall Jr.	(864) 240.2403		

To send individual email: firstname.lastname@smithmoorelaw.com

For additional information on this or any other labor and employment topic, please contact any member of the Labor and Employment Team.

The firm restricts its practice in the labor and employment area to the representation of management.

ATLANTA, GA
404.962.1000

CHARLOTTE, NC
704.384.2600

GREENSBORO, NC
336.378.5200

GREENVILLE, SC
864.242.6440

RALEIGH, NC
919.755.8700

WILMINGTON, NC
910.815.7100