

DO YOUR POLICIES REFLECT THE 2013 FMLA CHANGES?

New Family Medical Leave Act Changes

By Loren L. Speziale, Esq.

On February 6, 2013, revisions were made to the Family and Medical Leave Act (FMLA) regulations, which went into effect on March 8, 2013. The most significant changes to the recently adopted FMLA regulations are summarized below:

CALCULATING EMPLOYEE ELIGIBILITY FOR FMLA AND USERRA

For employees who miss work due to military service covered by the Uniformed Services Employment and Reemployment Rights Act ("USERRA"), an employer must count all periods of absence from work due to or necessitated by covered service under USERRA in determining whether an employee is eligible to take FMLA leave.

TRACKING INTERMITTENT OR REDUCED SCHEDULED LEAVE

An employer cannot count time actually worked as FMLA leave and may not force employees to take more intermittent or reduced scheduled leave than necessary to address the circumstances that triggered the FMLA leave.

When tracking FMLA leave, employers must use the smallest increment of time used for other forms of leave, subject to a one hour maximum. For instance, if an employee only needs one hour of FMLA to attend a medical appointment, an employer cannot force the employee to take a half day of FMLA leave. Similarly, if an employee arrives to work one half hour late due to a Serious Health Condition and the employer puts the employee to work right away, only a half hour of leave can be counted against the employee's FMLA entitlement.



LIMITS TO PHYSICAL IMPOSSIBILITY EXCEPTION

If it is physically impossible for an employee to start or end work mid-way through a shift, the entire period the employee is forced to be absent can be counted against the employee's FMLA leave entitlement only in the most limited circumstances. Further, an employer bears the responsibility to restore the employee to the same or equivalent position as soon as possible.

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PROTECTIONS FOR VETERANS AND MILITARY FAMILIES

Families of eligible veterans are provided with the same job-protected FMLA leave currently available to families of military service members, and more military families are able to take exigency leave for activities that arise when a service member is deployed.

NEW POSTER AND REVISED FORMS

The Department of Labor (DOL) issued a revised poster for use by employers covered by the FMLA. The new poster reflects the 2013 changes to the FMLA and should be on display. Additionally, the DOL updated its FMLA forms, including a new form for certification of the serious injury or illness of a veteran. The new poster, revised forms, and a summary of the new FMLA regulations are available on the DOL website at www.dol.gov.

In light of these changes, employers need to review their FMLA policies and procedures accordingly and ensure they are consistent with the new 2013 regulations.

LOREN L. SPEZIALE represents private and public corporations, privately held businesses, financial institutions, and individuals in transactional and litigation matters involving commercial and real property disputes, breach of contract claims, and employment-related actions. With deep roots in the New Jersey and Northeast Pennsylvania legal and business communities, Loren is a speaker on various topics including the work product doctrine, the attorney-client privilege, and internet marketing and advertising. Loren was selected for inclusion in the 2013 Pennsylvania Super Lawyers Rising Stars list, a distinction reserved for no more than 2.5% of young attorneys in Pennsylvania. In 2010, and 2011, Loren was recognized by New Jersey Super Lawyers on their Rising Stars list as well. Loren has an AV Preeminent® Peer Review Rating by Martindale-Hubbell®.

Frequent changes in the law result in under-informed Human Resources professionals and employees, which can leave businesses susceptible to risk. **Gross McGinley's Employment Law** attorneys help to mitigate risk by addressing the needs of our business clients in an efficient and timely manner. If you would like to further discuss the 2013 FMLA changes or any other employment matter, please contact us today.

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