

2013 changes to FMLA increase employees' protections

Written by Australian Business

September 18, 2013 /**24-7PressRelease**/ -- 2013 changes to FMLA increase employees' protections

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Congress passed the Family Medical Leave Act in 1993, granting employees the right to take extended leave from their jobs to deal with significant medical issues, such as the birth of a child, a serious medical issue that makes the employee unable to work, or caring for a spouse, parent or child with a serious medical issue. In 2013, the Department of Labor made changes and clarifications to FMLA regulations. A U.S. Supreme Court decision from June 2013 also affected FMLA rights. Employees should be aware of how the changes to FMLA impact their rights.

FMLA Changes

The changes to FMLA regulations center on military members' rights. Under the new regulations, military caregiver leave expanded so that "covered service member" includes veterans undergoing medical treatment for a serious illness or injury. The regulations also broadened the definition of serious illness or injury to include conditions that either existed prior to service or were aggravated by service, as well as those incurred in service.

Under the new regulations, exigency leave applies to family members of those in the regular armed forces, not just to those in the National Guard and Reserves. Additionally, active duty is now defined as deployment to a foreign country. A new exigency leave category allows an employee to take time to care for a military member's parent who is incapable of caring for him or herself while the military member is on active duty. Finally, the exigency leave available to spend time with a service member on Rest and Recuperation increased to 15 days, up from five.

FMLA Clarifications

The DOL also clarified some existing provisions of FMLA in 2013. Employers must include a military member's absence from work due to military service as time at work when calculating an employee's 12-month employment period to determine FMLA eligibility. Employers must also

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keep FMLA documents confidential if they contain family information in accordance with the Genetic Information Nondisclosure Act. Employers may not force employees to take more time than they need to address their medical issues. Finally, employers must use the smallest increment possible to track incremental FMLA that they use to track other types of leave.

U.S. Supreme Court decision impacted FMLA

In June 2013, the U.S. Supreme Court handed down a decision in *U.S. v. Windsor* holding that the federal Defense of Marriage Act was unconstitutional. The Court held that the fact that the law defined marriage as the union of one man and one woman violated the Due Process clause of the Fifth Amendment. The decision means that federal benefits and legal protections for spouses apply to same-sex marriages. As such, FMLA spousal leave benefits are available to those in same-sex marriages in states that recognize those marriages.

Employers often take advantage of employees' lack of awareness of their rights to take extended time off for certain life events available under FMLA. Employers deny employees time off, or even terminate their employment, in violation of the law. Employees have options in such situations. If you have questions about FMLA protections, speak with an employment law attorney with broad experience handling FMLA matters who can advise you about your specific circumstances.