



LABOR & EMPLOYMENT

# ALERT

## DEPARTMENT OF LABOR PUBLISHES FINAL REGULATIONS CLARIFYING MILITARY FAMILY LEAVE OBLIGATIONS

By Christina A. Stoneburner

The U.S. Department of Labor has published its final regulations clarifying military family leave obligations that were created in the National Defense Authorization Act (NDAA). The regulations are effective March 8, 2013, and can be found at 29 CFR 825.100, *et seq.*

The changes can be summarized as follows:

- Military caregiver leave includes care for a covered veteran not just an active duty service member or reservist. Specifically, a “covered veteran” is a person discharged from service on any grounds except a dishonorable discharge during the five year period immediately prior to when the employee takes leave to care for the covered veteran.
  - If the veteran was discharged from service prior to the passage of the NDAA (October 9, 2009), the period from October 9, 2009 through March 8, 2013, shall not count as part of the five year period.
- Serious injury or illness of an active servicemember or a covered veteran now includes a pre-existing injury or illness that is aggravated in the line of duty.
- Expands health care providers authorized who can provide a certification for care of a covered servicemember and allows a second and third opinion in certain circumstances if the certification is completed by a non-DOD, VA or TRICARE doctor.
  - An employer who requires certification for care for a covered veteran must accept, in lieu of the certification, documentation indicating the servicemember is enrolled in the Department of Veterans Affairs Program of Comprehensive

Assistance for Family Caregivers. No second or third opinion or recertification may be required where a covered veteran provides this documentation.

- Increases the length of time an eligible family member may take for exigency Rest and Recuperation leave to 15 days.
- “Qualifying Exigency leave” includes arranging and providing care for the parent, not just the child, of military member on or being called to active duty. The parent must be incapable of self-care as defined in the regulations.
- Reminds employers of their obligations under the Genetic Information Non-discrimination Act to maintain the confidentiality of records containing genetic information.
- Addresses new rules regarding leave for flight crews’ calculation of leave and entitlements by:
  - Defining “Airline Flight Crew employee” as an airline flight crewmember or flights attendant as defined by the FAA;
  - Including in the Definition of “eligible employee” a different hours worked requirement for airline flight crew employees than the 1250 requirement for all other employees.
  - Airline flight crew employees are eligible if they have worked or been paid for at least 60 percent of the “Applicable Monthly guarantee,” provided that the hours worked or paid also total at least 504 hours, not counting

personal commute time, or vacation, medical or sick leave.

- Defining “Applicable Monthly guarantee” as either the minimum number of hours for which an employer has agreed to schedule an active crewmember or, in the case of a crewmember on the reserve list, the minimum number of hours for which the employer has agreed to pay the reserve crewmember.

The affected provisions of the regulations are:

- 825.102 (definitions moved from 825.800 and adding supplemental definitions)
- 825.110
- 825.122

- 825.126
- 825.127
- 825.309
- 825.310
- 825.500
- 825.702
- 825.800-803 (new)

The revised regulations also remove the certification forms from the regulations, however, these forms are still available on the website as the model forms.

If you have questions about this Alert, please contact Christina A. Stoneburner at 973.994.7551 or [cstoneburner@foxrothschild.com](mailto:cstoneburner@foxrothschild.com) or any member of Fox Rothschild's Labor & Employment Department.

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