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New Requirements Under the Family and Medical Leave Act

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New regulations under the Family and Medical Leave Act (FMLA) will become effective on March 8, which will expand the rights of those who need leave for a qualifying exigency or military caregiver leave. Following highlights some of the most notable changes:

- The FMLA previously required that an employee be employed for 12 months in order to qualify for FMLA protection. The FMLA did not require that the 12-month period need be consecutive; however, any employment prior to a break in service of more than seven years was generally not counted toward the 12 months. The 2013 regulation changes this, stating that **all** periods of covered military service under the Uniformed Services Employment and Re-employment Act are also counted towards the employee's eligibility for FMLA leave.

- The 2013 definition of Military Member continues to include members of the National Guard and Reserves and the Regular Armed Forces but adds Covered Veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness. But, the expanded definition of Covered Veteran now includes any individual who was discharged or released under conditions other than dishonorable at anytime during the five year period prior to the first date the eligible employee takes FMLA leave to care for the Covered Veteran. The period of October 28, 2009 through March 8, 2013 is excluded in the determination of the five-year period for Covered Veteran status.

- Leaves of absences for qualifying exigency leave have two major changes. First, an employee can now spend up to 15 calendar days (up from five days) with the military member or his/her child or certain other dependents who are on leave for rest and recuperation. Second, an employee can now take exigency leave to care for a Military Member's parent who is incapable of self-care when the care is necessitated by the member's covered active duty. This may include such things as making arrangements for alternative care, providing care on an immediate basis, admitting or transferring the parent to a care facility or attending meetings with staff at a care facility.

- Military caregiver leave now also includes serious injuries or illnesses that existed before the beginning of the Service Member's active duty, provided that the injuries or illnesses were aggravated by service in the line of duty on active duty in the Armed Forces.

- Likewise, pursuant to the 2013 regulations, a serious injury or illness for a covered veteran means an injury or illness that was incurred or aggravated by the Service Member in the line of duty on active duty in the Armed Forces and manifested itself before or after the member became a Covered Veteran and is:

- A continuation of a serious injury or illness that was incurred or aggravated when the Covered Veteran was a member of the Armed Forces and rendered the Service Member unable to perform the duties of his or her office, grade, rank or rating; or
- A physical or mental condition for which the Covered Veteran has received a VA Service Related Disability Rating (VASRD) of 50 percent or greater and such VASRD rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
- A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
- An injury, including a psychological injury, on the basis of which the Covered Veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

- The 2013 regulations provide that employers may require the employee to provide specific documentation confirming: enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers, familial relationship or the veteran's discharge date and status. This is an addition to the types of documentation otherwise permitted under the FMLA.

- Employers may now require second and third opinions of healthcare providers who are not affiliated with the Department of Defense, Veteran Affairs, or TRICARE, using the well known process for challenging an employee's serious health condition.

- Finally the new regulations make clear that an employer is required to maintain and safeguard the confidentiality of all records as required under the Genetic Information Non-Discrimination Act.

If your FMLA policy requires updating, please contact the author of this Rapid Report or another experienced Plunkett Cooney employment attorney.

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