



405 Madison Ave., Ste. 1300
Toledo, Ohio 43604
(419) 244-6788

www.Bugbee-Conkle.com

John F. Wetli
Gregory B. Denny
Tybo Alan Wilhelms
Robert L. Solt, III
Robert P. King
Mark S. Barnes
Harvey C. Miller
Andrew J. Wilhelms
Janelle M. Matuszak

FMLA CHANGES EFFECTIVE JANUARY 16, 2009. ARE YOU PREPARED?

On November 17, 2008 the Department of Labor published final regulations implementing changes to the Family and Medical Leave Act (FMLA). The new regulations were first proposed in early 2008, and are effective January 16, 2009.

A number of changes have been made. Some of the more significant include:

1. Extends protection to employees who are needed to care for certain family members in the military with a serious injury or illness incurred in the line of duty;
2. Allows family members of National Guard and Reserve personnel on active duty to take FMLA leave in order to manage activities associated with their service, known as “qualifying exigencies”;
3. Defines such “qualifying exigencies” as: short-notice deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities to which the employer consents;
4. Employees eligible for leave under the new “leave to care for a covered service member” of the FMLA are permitted to take up to 26 weeks of leave in a 12 month period. This leave may be taken separately from other forms of FMLA leave (i.e., for serious health conditions), so long as the regular FMLA leave does not exceed 12 weeks and the total leave does not exceed 26 weeks in the 12 month period;
5. In contrast, employees eligible for leave under the new military “qualifying exigencies” appear to be limited to the FMLA’s original 12 week maximum;



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FMLA

(Continued from Page 1)

6. The “hours worked” requirement has been rewritten, so that if an employee would have met the 1,250 hours needed to qualify but for intervening military service, he or she remains eligible for FMLA;
7. Physician assistants can prepare FMLA medical certifications;
8. Employees may not be required to work light duty jobs in lieu of taking leave, and those who do so voluntarily are not on FMLA leave;
9. The final regulations provide four separate types of FMLA notice that must be provided to employees;
10. Authorizes the use of new medical certification forms; and
11. Limits an employer’s right to obtain recertification when the underlying condition will last more than 30 days.

The changes noted above, and several others we have not mentioned, are intertwined throughout the existing regulations, making implementation very difficult.

What should you do?

It is critical that employers subject to the FMLA modify their company policies and documents, to be in compliance with the new regulations, by January 16, 2009.

For more information concerning the FMLA’s changes please contact a member of our Labor and Employment law practice group at (419) 244-6788:

Tybo Alan Wilhelms
(twilhelms@bugbee-conkle.com)

Andrew J. Wilhelms
(awilhelms@bugbee-conkle.com)

Mark S. Barnes
(mbarnes@bugbee-conkle.com)

MARCH 12, 2009. SAVE THE DATE!

Bugbee & Conkle, LLP is hosting a seminar the afternoon of March 12, 2009 on issues of interest to employers. Speakers and agenda will follow.

THE EMPLOYER is not intended to provide legal advice, but is intended as a service to the clients of Bugbee & Conkle, LLP and to alert them to recent developments affecting the employment relationship, with a particular emphasis on the perspective of the employer.