

FMLA Amendments Require Employers to Update Office Postings and Policies

As reported in earlier editions of the Employer Spotlight, on January 28, 2008, President Bush signed a law amending the Family and Medical Leave Act (FMLA) to provide additional leave benefits to family members of military personnel. The new provisions grant (1) up to twelve weeks of unpaid leave for a “qualifying exigency” when a family member is about to report for active duty or is on active duty; and (2) up to twenty-six weeks of leave for a family member to care for an injured service member. As a result of the changes, employers covered by the FMLA will need to update their postings and handbook policies to reflect these changes in the law.

The existing FMLA regulations require each ‘covered employer’ to post and keep posted on its premises a notice explaining the FMLA’s provisions to employees, regardless of whether the employees working at that site are eligible for FMLA leave. For purposes of the FMLA and this posting requirement, a ‘covered employer’ is defined as a person or entity engaged in commerce and employing 50 or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding calendar year. If you meet the definition of a ‘covered employer’ you have an obligation to update your FMLA postings.

While the U.S. Department of Labor (DOL) has indicated that an employer needs to include the new FMLA rights in their postings, the DOL has not definitively said that an employer needs to replace its current posters with new posters which incorporate the newly created FMLA rights. Instead, an employer may meet its posting obligation by adding an attachment to the poster. On its website, the DOL has a sample page explaining the new FMLA rights. An employer likely can meet its posting obligations by including this posting with its existing poster to advise employees of their FMLA rights. When the employer decides to replace its poster, it can order a new poster with the new FMLA leave rights incorporated into the poster.

To view the DOL FMLA military leave poster, go to <http://www.dol.gov/esa/whd/fmla/NDAAAmndmnts.pdf>

Covered employers also should update the FMLA policies in their employee handbooks. While the FMLA does not require that an employer have a handbook at all, if a covered employer does have a handbook, the handbook must contain a policy describing the FMLA and an employee’s leave rights under the statute. Because of the new statutory amendments that expand the scope of qualifying leave, employers should review and update their policies to describe accurately the circumstances under which eligible employees may take protected leave.

If you have any questions about this article or your posting obligations or FMLA policy please contact Sherri Kimmell at 404-527-4934 or skimmell@mckennalong.com.