

Labor Department Issues Final Regulations

On November 17 the Department of Labor issued final regulations revising the Family and Medical Leave Act (FMLA) and implementing the military leave provisions. The regulations become effective January 16, 2009. The final regulations are substantially similar to the proposed regulations and make many changes to the notice and certification provisions.

"This final rule, for the first time, gives America's military families special job-protected leave rights to care for brave service men and women who are wounded or injured, and also helps families of members of the National Guard and Reserves manage their affairs when their service member is called up for active duty," said U.S. Secretary of Labor Elaine L. Chao. "At the same time, the final rule provides needed clarity about general FMLA rights and obligations for both workers and employers."

Among the changes:

- Employers have five business days instead of two days to designate leave as FMLA-qualifying
- New forms have been issued including separate notices for employers to use to alert employees of their eligibility for FMLA leave and to designate a specific leave request as FMLA-qualifying
- There are separate certification forms for one's own serious health condition and that of a family member
- Certifications for the new military family leave provisions including one for qualifying exigencies and one for the serious injury/illness of a covered servicemember
- Employees are required to obtain medical certification that their need for intermittent leave is medically necessary
- Holidays occurring during full-weeks of FMLA-qualifying leave will count against the 12 weeks of total leave permitted; holidays occurring during leave of less than a full week will not count against the total FMLA leave permitted
- Employers may exclude employees who have taken FMLA-qualifying leave from perfect attendance awards as long as employees on other types of leave are treated similarly
- Employers may include waivers of FMLA claims on separation agreements

More information: <http://www.dol.gov/esa/whd/fmla/finalrule.htm>