



[Jonathan G. Rector](#)

405.235.7702

jonathan.rector@crowedunlevy.com

FMLA Updates – Employer Action Required

On February 5, 2013 (coincidentally, the 20th anniversary of the FMLA), the United States Department of Labor issued a final rule which took effect on March 8, 2013 that makes changes to existing FMLA regulations. As the title foreshadows, covered employers will need to hang a new poster in the breakroom.

Although a new poster is required,¹ the actual regulatory changes apply primarily to FMLA provisions that are not often utilized, but nonetheless affect members of the military and airline flight crews. Changes were made to, among other provisions, the qualifying exigency leave provision, the military caregiver leave provision, and the provision governing how employers calculate the employee eligibility hours of service requirement for airline flight crew employees.

An eligible employee may take FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter or parent is on active duty. The new regulations expand who is considered to be a "military member" to not only include members of the National Guard and Reserves, but also members of the Regular Armed Forces.

The new regulations also create a new qualifying exigency leave category for parental care. Eligible employees may now take 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.

As to the military caregiver leave, under the new regulations the definition of covered servicemember is expanded to include covered veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness. A covered veteran is an individual who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. Under the previous regulations, the definition of servicemember did not include veterans.

Additionally, the hours of service criteria for airline flight crews will be met if during the previous 12-month period the airline flight crew employee has worked or been paid for not less than 60% of the applicable monthly guarantee and has worked or been paid for not less than 504 hours (not including commute time, vacation, sick, or medical leave). A helpful side-by-side comparison of the old regulations and the new regulations is available to employers at <http://www.dol.gov/whd/fmla/2013rule/comparison.htm#.URQTloDzU6o.twitter>

1. The poster can be found at the Department of Labor website: <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>

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Oklahoma City
20 North Broadway
Suite 1800
Oklahoma City, OK 73102
(405) 235-7700

Tulsa
500 Kennedy Building
321 South Boston Avenue
Tulsa, OK 74103
(918) 592-9800