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FMLA and Other Considerations for Military Employees and Families in Idaho

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FMLA Application and Military Family Updates

As many of you are aware, the federal Family Medical Leave Act (“FMLA”), which provides for unpaid leave to employees in certain circumstances, was amended this last year to provide for two new types of military family leave. The FMLA applies to employers in Idaho with at least 50 employees who are employed by the employer within a 75-mile radius. Eligible employees must have worked for the employer for at least 12 months and worked 1250 hours in that timeframe. New federal regulations published in November on the FMLA, including first-time published regulations on these military family leave provisions, are getting a great deal of attention from employers throughout the United States.

Unlike some other states, there is no state-equivalent version of the FMLA with which employers in Idaho must separately and additionally comply. This allows for a more streamlined approach to an employer’s leave policies and practices. Notably, Idaho’s Department of Labor does not require employers to post certain state and federal notices including “Rights Under the FMLA.” Similarly, federal law requires FMLA-covered employers to post the text of a particular notice, which has been updated with the new FMLA regulations (*see* WHD Publication 1420, revised January 2009).

Historically, the FMLA provided leave: 1) for the birth of an employee’s child; 2) for the employee to care for a spouse, son, daughter or parent with a serious health condition; or 3) for the employee’s own serious health condition. Two new reasons for leave are now added to this list: 1) for qualifying exigency leave for families of National Guard or Reservists, and 2) for covered servicemember leave to family members caring for a service member (a current member of the Armed Forces including those in the National Guard or Reserves), who has a serious injury or illness incurred in the line of duty while on active duty.

Qualifying exigencies under the first new type of military family leave are not medically-based reasons for a leave. Instead, as clarified under the recently published regulations, qualifying exigencies include attendance at military events, arranging for alternative childcare, addressing financial and legal arrangements prior to deployment, counseling, and post-deployment events.

Covered servicemember leave is a medically-based reason for a family member’s leave. An eligible employee who is the spouse, son, daughter or next of kin (a newly defined and expanded FMLA-covered employee particular to this type of leave) of a servicemember is entitled to a total of 26 weeks of

leave in a 12-month period to care for the servicemember. This is an expansion of the 12-week period of leave that FMLA typically covers, and is also unique to this particular reason for FMLA leave. The regulations clarify 26 weeks of leave is the maximum number an employee may be entitled to in a 12-month period.

The U.S. Department of Labor has just published separate certification forms for these two new types of family military leave (*see* DOL Forms WH-384 and WH-385). While still optional, employers are limited to the language used in these forms. As such, the use of these standardized forms is highly recommended.

Other Considerations for Military Employees in Idaho

Employers in Idaho should be aware of additional considerations under federal law and Idaho state law with respect to military employees. A federal law called the Uniformed Services Employment and Reemployment Rights Act (“USERRA”) prohibits discrimination against individuals who are members of the National Guard, Reserves, and other uniformed services. USERRA also provides for certain job protections to these individuals and allows them to reclaim their civilian employment after absences for military service or training.

USERRA applies to all public and private employers irrespective of their size. An Idaho employer with just one employee is subject to this federal law. A mandatory notice, which was updated in July 2008, is set out on the U.S. Department of Labor website at (http://www.dol.gov/vets/programs/userra/USERRA_Federal.pdf).

Idaho law separately provides protections for certain military personnel. Members of the National Guard and Reservists are entitled to fifteen (15) days of leave for military training each year, along with job protection after such a leave. I.C. 46-224. Similar to the protections under USERRA, members of the Idaho National Guard or Idaho employees who are members of the Guard in another state are entitled to reemployment rights and may not be discharged without cause within one (1) year after such reemployment. I.C. 46-407. Employees of the state of Idaho enjoy additional protections including 120 days of leave per year for military duty. I.C. 46-216.

Update Leave Policies and Practices

Idaho employers subject to FMLA should obtain information on these and other important changes to the FMLA regulations, which become effective January 16, 2009. It is particularly important that employer policies and notices be amended to reflect these changes. In reviewing and updating policies and practices, all Idaho employers should keep in mind the additional considerations for military employees under USERRA and those separately provided for under Idaho law.