Family Medical Leave Act and Military Family Leave

(Updated June 6, 2013)
Webinar Objectives

The objective of this workshop is to provide an overview of the key changes in the Family Medical Leave Act and Military Family Leave.

- **FMLA**
  - Background Information
  - Required Posting
  - Required Employer Notices
  - Required Employee Notice
  - Certification Forms
  - Clarification and Authentication
  - Genetic Information Non-discrimination Act (GINA)
  - Changes to FMLA – New Certification, Fitness for Duty, Light Duty, Compensatory Leave, and Overtime
Webinar Objectives (continued)

- Military Family Leave
  - Qualifying Exigency Leave
  - Military Caregiver Leave
- Questions
Background Information

- **Eligibility for FMLA**
  - Employed by the State for 12 months
  - 1,250 hours worked in the 12 months immediately preceding the date leave is to begin

- **Maximum Length of Leave**
  - Up to 12 weeks of medical and/or qualifying exigency
  - FMLA Leave within any 12 month period
  - Up to 26 weeks of military caregiver leave in a 12 month period
  - Continuous, intermittent, or reduced schedule leave
Background Information

- Qualifying Reasons for FMLA Leave
  - Birth of a son or daughter and to care for the newborn child
  - Placement of a son or daughter for adoption or foster care
  - Care for the employee’s spouse, son, daughter or parent with a serious health condition
  - Serious health condition that makes the employee unable to perform the functions of the employee’s job
  - Qualifying exigency for covered military member (new)
  - Care for ill or injured covered service member (new)
Background Information

- Continuing Treatment – Changes to definitions
  - Incapacity of more than 3 calendar days and treatment

- Treatment Parameters
  - Two or more times by health care provider within 30 days of the first day of incapacity
  - Treatment by health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider
  - First visit – within 7 days of the first day of incapacity

- Chronic conditions
  - 2 or more visits to a health care provider per year
Employee Rights And Responsibilities Under The Family And Medical Leave Act

- Provided to each employee when hired
- Printed and posted for employees who do not have access to computers at work
Required Employer Notices

Notices

- **Notice of Eligibility, Rights, and Responsibilities**
  - Provided to an employee within *5 business days* of the date that:
    - An employee requests FMLA
    - Employer becomes aware that an employee’s leave may be FMLA-qualifying

- **Designation Notice**
  - Provided to an employee once the employer has sufficient information to determine FMLA-coverage eligibility
  - Employee must be notified within *5 business days* that the leave has been designated as FMLA
Required Employee Notice

- Family and Medical Leave Application
  - Sufficiently explain reasons for leave
- Calling in sick is not considered sufficient notice
- Leave may be denied if the employee fails to adequately explain the reason for leave
- Employee must inform you if the leave is for a reason which was previously certified
Employee Medical Certification Form

Certification of Health Care Provider for Employee’s Serious Health Condition (Form WH-380-E)

- Provides space for employee’s essential job functions
- Check off to indicate that the employee’s job description is attached

Employee allowed 7 calendar days to provide the additional information if the certification is incomplete or insufficient
Family Member Medical Certification Form (new)

Certification of Health Care Provider for Family Member’s Serious Health Condition (WH-380-F)

- Asks for detailed information about the family members’ condition
- Amount of time the employee might need to care for the family member

Employee allowed 7 calendar days to provide additional information if the certification is incomplete or insufficient
Clarification and Authentication

- Employer may contact the health care provider to
  - Clarify information on medical certification form
  - Authenticate medical certification form

- Limited to contacting health care provider to
  - understand handwriting on the certification
  - understand the meaning of a response
  - request verification that information on the certification form was completed and/or authorized by the health care provider who signed the document

- No additional medical information may be requested
Clarification and Authentication

- HIPAA requirements must be satisfied when employee’s health information is shared with an employer by a HIPAA-covered health care provider
- It is employee’s responsibility to provide complete and sufficient certification and clarifications, if necessary
- If employee does not provide a required HIPAA release, does not authorize employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, FMLA Leave may be denied
Clarification and Authentication

- Employer contact must be made by
  - Health care professional
  - Human resources professional
  - Leave administrator
  - Management official

(as determined by the employing department)

- Under no circumstances may the employee’s direct supervisor contact the employee’s health care provider
Genetic Information Nondiscrimination Act (GINA)

- Title II – Genetic Nondiscrimination in Employment
- What is genetic information?
- Title II of GINA prohibits use of genetic information for purposes of:
  - Discrimination
  - Harassment
  - Retaliation
- Confidentiality of Genetic Information
New Medical Certifications

- Approval is on leave year basis
- If the need for leave lasts beyond the leave year, employee can be required to provide a new medical certification in each subsequent leave year
  - Second opinion (paid by employer) can be requested on new certification
- EXAMPLE:
  John provides a certification for intermittent leave on May 1st. The duration is “unknown”; leave is approved to the end of the leave year (December 31). John can be required to provide a new certification at the start of the new leave year on January 1 and a second opinion can be requested.
Fitness for Duty

- Employer may require a fitness-for-duty certification
- May require the certification to specifically address:
  - employee’s ability to perform the essential functions of their position
- The employee must be provided with a list of essential functions of the employee’s job no later than when the Designation Notice is provided to the employee.
Light Duty

- Time that an employee spends working light duty does *not* count toward the 12 week FMLA entitlement during the leave year
- Employee is entitled to job restoration for the remainder of the leave year
Accrued Leave

- Employees may request or may be required to use accrued leave during periods of FMLA Leave
  - Accrued Compensatory Leave
  - Sick Leave
  - Annual Leave
Inability to Work Overtime

- Missed overtime must be counted against an employee’s FMLA entitlement if the employee would have been required to work overtime but for their FMLA condition
Personnel Action Requests (PAR’s)

- Employee out for a full calendar month
  - BOMS transaction code 58 (Leave of Absence)
- Employee out for less than a calendar month
  - BOMS transaction code 98 (Miscellaneous Change)
Military Family Leave

- **Qualifying Exigency Leave**
  - Leave taken by an eligible employee for any qualifying exigency arising out of the fact that a military member (National Guard and Reserves and Regular Armed Forces) is on covered active duty or call to active duty status

- **Military Caregiver Leave**
  - Leave taken by an eligible employee to care for a covered servicemember or certain veterans with a serious injury or illness

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<th>Military Caregiver Leave</th>
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Military Family Leave

Eligibility Requirement for Military Family Leave

- 12 months of employment in the past 7 years
- 1,250 hours worked in the 12 months immediately preceding the date leave is to begin
Son or Daughter

- Son or daughter of a covered servicemember
  - Biological, adopted, foster or stepchild, legal ward, or child for whom the service member stood *in loco parentis*
  - Of any age

- Son or daughter on active duty or call to active duty
  - Employee’s biological, adopted, foster or step child, legal ward, or child for whom the employee stood *in loco parentis*
  - On active duty or call to active duty status
  - Of any age
Qualifying Exigency

- Qualifying Exigencies Include
  - Short-notice deployment – up to 7 days
  - Military events and related activities
  - Childcare and school activities – not routine child care
  - Financial and legal arrangements – up to 90 days after service ends
  - Counseling
  - Rest and recuperation – short-term only, up to 15 days
  - Past-deployment activities – up to 90 days after service ends
  - Parental Care Leave
  - Additional activities – as agreed upon by employer and the employee
Qualifying Exigency Leave

- **Maximum Length of Leave**
  - 12 weeks of qualifying exigency leave

- **Covered Military Member**
  - Employee’s spouse, son, daughter or parent who is on active duty or call to active duty

- **Active Duty or Call to Active Duty Status**
  - A member of the Regular Armed Forces National Guard or Reserves
  - Under a call or order to active duty in support of a contingency operation

- **No recertification is required**
An employee must provide notice of the need for qualifying exigency leave as soon as practicable.
Military Caregiver Leave

- Serious Injury or Illness
  - Injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of the member’s office, grade, rank, or rating.
Military Caregiver Leave

- Covered Servicemember
  - Member of Armed Forces (including National Guard or Reserve)
  - Undergoing medical treatment, recuperation, or therapy
  - In outpatient status
  - Temporary disability retired list
  - Serious injury or illness
  - Incurred in the line of duty on active duty
Military Caregiver Leave

- Covered Veteran (new)
  - Family members of certain veterans with a serious injury or illness incurred or aggravated in the line of duty on active duty and that manifested before or after the veteran left active duty.
  - This expansion of the definition became effective March 8, 2013.
Next of Kin

- Nearest blood relative other than spouse, parent, son, or daughter, in order of priority:
  - Blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions
  - Brothers and sisters
  - Grandparents
  - Aunts, uncles and first cousins

- Unless service member has designated a single blood relative as next of kin
Military Caregiver Leave

- **Maximum Length of Leave**
  - Up to 26 weeks of military caregiver leave in a 12 month period
  - 12 month period starts on the first day the employee takes military caregiver leave
  - Any combination of absences in the 12 month period, including medical FMLA, may not exceed 26 weeks

- **Use of Leave - “per member” and “per injury”**
  - Use leave to care for the same family member with different illness or injury or
  - Use leave for a different family member
Request Military Caregiver Leave

Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave (Form WH-385)

- Must provide 30 days advance notice for planned medical treatment for a serious injury or illness of a covered servicemember.
- When 30 days advance notice is not possible, the employee must provide notice as soon as practicable.
- When the need for leave is unforeseeable, an employee must comply with an employer’s normal notice or call-in procedures, absent unusual circumstances.
Request Military Caregiver Leave (new)

Certification for Serious Injury or Illness of Certain Veterans – for Military Family Leave (Form WH-385V)

- Must provide 30 days advance notice for planned medical treatment for a serious injury or illness of certain veterans
- When 30 days advance notice is not possible, the employee must provide notice as soon as practicable.
- When the need for leave is unforeseeable, an employee must comply with an employer’s normal notice or call-in procedures, absent unusual circumstances.
Questions