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Special Report for HR Professionals

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The Management Advantage, Inc., PO Box 3708, Walnut Creek, CA 94598
www.hrwebstore.com newsletter@management-advantage.com 925-671-0404

DOL RELEASES FINAL REGULATIONS FOR FMLA CHANGES

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On November 17, 2008, the U.S. Department of Labor published its final rule for updates to its regulations under the 15-year-old *Family and Medical Leave Act (FMLA)*. “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.”

The new regulations that implement the changes in FMLA law will go into effect on January 16, 2009, 60 days after the Federal Register publication date. Changes include:

- **Military Caregiver Leave**: Provides for up to 26 weeks (6 months) unpaid leave of absence for employees with family members needing care due to a military-duty-related injury or illness. 26 week limit will renew every twelve months.
- **National Guard and Military Reserve Family Leave**: Employees who are family members of National Guard or Military Reservists who are called to active duty may take FMLA leave to assist with preparing financial and legal arrangements, and other family issues associated with rapid deployment or post-deployment activities. An employer may agree to any non-listed condition as a qualifier for FMLA leave as well.
- **Light Duty Assignments**: Clarifies that “light duty” work does not count against an employee’s FMLA leave entitlement. Also provides that an employee’s right to job restoration is held in abeyance during the light duty period. An employee voluntarily doing light duty work is not on FMLA leave.
- **Employer Notices**: Consolidates all employer notice requirements into one section of the regulations to clear up some conflicting provisions and time periods.

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- Medical Certification Process: Addition of a requirement that limits who may contact the employee's health care provider and bans an employee's direct supervisor from making the contact.

Society for Human Resource Management (SHRM) Chief Operating Officer, China Gorman said, "SHRM expects that changes by the Department of Labor to the *Family and Medical Leave Act* will provide much needed clarity to the rules, allowing for smoother implementation in the workplace. HR professionals welcome these new rules, especially the added support for our nation's military families, because they will restore the balance intended by Congress between employers' needs for employees and employees' needs for time to attend to important family and medical issues."

There are some specific, very detailed, changes to definitions used in the law. Some technical changes were inserted to reflect decisions by the U.S. Supreme Court and some lower courts. (*Ragsdale v. Wolverine World Wide Inc.*) Although all the current six definitions of "serious health condition" are the same as before, there are some detailed eligibility changes. For example, the new regulations clarify that if an employee is taking leave involving more than three consecutive calendar days of incapacity plus two visits to a health care provider, the two visits must occur within 30 days of the incapacity. It also defines "periodic visits to a health care provider" for chronic serious health conditions as at least two visits to a health care provider per year.

In the end, HR professionals will have a lot of study ahead of them to properly identify and implement the changes necessary in their organizations. Through it all, your best friend will be your management attorney. Involve your legal advisor in the process so you don't overlook something that can come back to haunt you later. This is a mine field of potential compliance problems.

For more information:

DOL News Release on Final FMLA Rule

2 pages – HRML document

<http://www.dol.gov/opa/media/press/esa/esa20081703.htm>

Federal Register Notice of FMLA Regulatory Changes

201 pages – PDF document

<http://www.dol.gov/federalregister/PdfDisplay.aspx?DocId=21763>

U.S. Department of Labor – Wage and Hour Division

Entry to Web Site for FMLA Updates and Compliance Issues

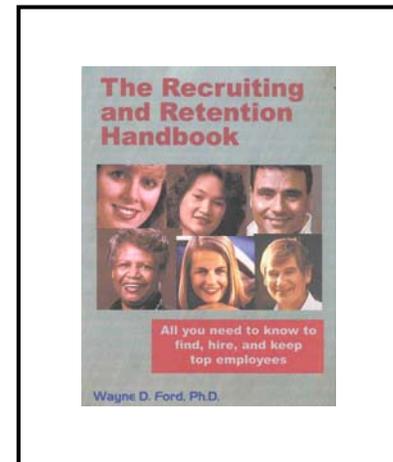
<http://www.dol.gov/esa/whd/fmla/finalrule.htm>

The new FMLA regulations require updated compliance posters in nearly every workplace in the country. Be sure you get your updated posters by January 16, 2008.

The Recruiting and Retention Handbook

Dr. Wayne D. Ford shows you how recruiting and retention are parts of a single process. In this book, you will see how the process is treated as one continuous effort. Poor recruiting practices can increase turnover dramatically. High turnover can likewise hurt recruitment. Therefore your retention efforts must begin with the first contact of the recruiter with the prospect. It must continue during the entire employment of the individual. Anything less than this and you are wasting assets in a multitude of ways.

<http://www.management-advantage.com/products/RRHandbook.htm>



GETTING READY FOR 2009 POSTER REQUIREMENTS

So far, ten states and two cities have announced minimum wage changes that will require new posters in work areas within their jurisdictions. Those must be posted by January 1, 2009 for an employer to be in compliance.

Now that FMLA updates have been released, our printer is working at top speed to update the All-On-One labor law compliance posters. Shipping will begin before the end of the year.

Here are the minimum wage updates to this time:

- Arizona = \$7.25
- Colorado = \$7.28
- Connecticut = \$8.00
- Florida = \$7.21
- Missouri = \$7.05
- Montana = \$6.90
- Ohio = \$7.30
- Oregon = \$8.40
- Vermont = \$8.06
- Washington = \$8.55
- Albuquerque, NM = \$7.50
- San Francisco, CA = \$9.79

<http://www.management-advantage.com/products/posters.htm>

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VETS-100 FINAL RULE ISSUED

The Labor Department's Veterans Employment and Training Service (VETS) issued a final rule revising the regulations requiring federal contractors to report annually on the number of their employees who are veterans. The final rule implements the Veterans' Benefit and Health Care Improvement Act of 2000 amendments that extended to "recently separated veterans" the protections contained in the Vietnam Era Veterans' Readjustment Assistance Act of 1974. Recently separated veterans are defined as veterans who left active U.S. military duty within the past three years.

The final rule also clarifies that the requirements in 41 CFR 61-250 apply to government contracts entered into before December 1, 2003, and that the requirements of 41 CFR 61-300 apply if a contract has been created or modified since that date and has a value of at least \$100,000.

The final rule requires that data about veterans in the employer's establishment be reported each year on the VETS-100 report which has also been modified.

<http://www.dol.gov/vets/regs/fedreg/final/2005023960.pdf>

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PO Box 3708
Walnut Creek, CA 94598
925-671-0404

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Editor: William H. Truesdell, SPHR

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