FMLA

The new FMLA: 9 changes you must comply with

For the past 15 years, complying with the FMLA has been complex, but at least the law (once you figured it out) stayed the same. But that all changed recently when the first major overhaul of the FMLA took effect.

The new rules drastically changed the way much of the FMLA works. Some changes favor employers by offering greater flexibility in administering leave.

Here are the most important changes:

1. Military caregiver leave. Employees are allowed to take up to 26 weeks of unpaid FMLA leave in each 12-month period to care for family members who suffered a serious injury or illness while on active military duty.

Note: The "single 12-month period" operates as a separate and distinct "leave year" that starts on the first day of caregiver leave.

2. Leave for families of National Guard and Reserve members. Families of active-duty National Guard and Reserve members may take up to 12 weeks of job-protected FMLA leave per year to manage their affairs.

The FMLA leave of the employee (a spouse, son, daughter or parent) must be related to certain qualifying circumstances related to the military service. The rules define a qualifying situation as one involving: (1) short-notice deployment; (2) military events and activities; (3) child care and school activities; (4) financial and legal arrangements; (5) nonmedical counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) additional activities in which the employer and employee agree to the leave.

3. Revised definition of a "serious condition." The law says a serious condition must involve more than three consecutive calendar days of incapacity plus two visits to a health care provider. Those two visits must occur within *30 days* of the period of incapacity.

4. Direct contact with doctor allowed. *Good news:* The new regulations allow employers to *directly* contact an employee's health care provider to seek clarification about information on an employee's FMLA certification form.

Note: An employee's direct supervisor is prohibited from making such inquiries. The rules give this right only to a "health care provider, a human resources professional, a leave administrator (including third-party administrators), or a management official." Don't ask doctors for information beyond what the certification form requires.

5. Employer notice obligations. In addition to conspicuously posting a notice about your FMLA and complaint-filing procedures, you must provide the same notice in your employee handbooks (or distribute a copy of your FMLA policy upon hire). Employers now have five business days to send out FMLA eligibility and designation notices to employees.

6. Less leeway for employees' notice. Previously, employees could give notice of their need for FMLA leave up to two business days *after* being out on FMLA leave. Now, most employees who take intermittent FMLA leave must follow the employer's call-in procedures for reporting an absence, unless there are unusual circumstances.

7. Settlement of past FMLA claims allowed. The rules clarify that employees can retroactively (typically as part of a severance or settlement agreement) volunteer to settle their FMLA claims with their employers without getting court or U.S. Department of Labor approval. Prospective waivers of FMLA rights will continue to be prohibited.

8. Light duty doesn't count as FMLA leave. The rules make clear that the time employees spend performing "light-duty" work does *not* count toward their 12 weeks of FMLA entitlement.

9. Perfect-attendance awards can be denied. Employers can deny perfect-attendance awards to employees who take FMLA leave (and thus are absent) as long as they treat employees taking non-FMLA leave the same way.