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# Don't Drop the Ball When Requesting FMLA Deployment-Related Leave

By Mathew B. Tully

Federal employees have long had to juggle work, home and financial responsibilities, along with parting goodbye to loved ones, when family members were called to active duty in the armed forces. Soon, changes to the Family Medical Leave Act (FMLA) will take federal work responsibilities out of the juggling mix, and they will be replaced with strict leave certification requirements when a family member is called to duty. If employees drop this ball, their jobs could be at risk.

Beginning Oct. 31, federal employees will be allowed to take up to 12 weeks of unpaid leave to address “qualifying exigencies” stemming from an immediate family member’s call or order to active military duty. There are eight situations when a federal employee, whose son, daughter, spouse or parent has been called to active duty, is eligible for FMLA leave. A final rule

promulgated by the Office of Personnel Management provides FMLA coverage for a federally employed family member of a deployed serviceman when any of the following apply:

short-notice deployments;

military events or related activities;

childcare and school activities;

financial and legal arrangements;

counseling;

rest and recuperation;

post-deployment activities; and

additional agency and employee-approved activities.

Traditionally, the FMLA allowed qualified private and public sector employees to take up to 12 weeks of unpaid leave over a 12-month period for the purpose of addressing certain medical-related situations, including birth of a child, newborn care, adoption, foster care placement, care for the employee, or care for an employee’s family member.

As with the traditional types of FMLA leave, federal employees requesting deployment-related leave must submit a formal request and provide supporting documentation. As in the past, when employers doubt the validity of any such request, they may go so far as to demand employees obtain second or third opinions from health care providers. Earlier this year, the 9th U.S. Circuit Court of Appeals said in Lewis v. U.S.

the U.S. Air Force was justified in removing an employee who went on unpaid leave without providing sufficient medical certification.

What federal employees need to know:

On the first occasion leave is requested for a deployment-related exigency, a federal employee must provide an employer with a copy the family member's active duty orders or call to active duty papers.

Additional copies of documentation must be provided if subsequent leave requests are as a result of different active duty orders or calls to active duty.

Agencies can require the following information to support qualifying exigency leave:A statement of facts signed by the employee, which describes the need for leave and when a deployment-related exigency started or will start.

Beginning and end dates should be identified in the statement of facts.

An estimate of the frequency and duration of a qualifying exigency in the event the exigency requires an intermittent leave schedule.

If applicable, the name, title, organization, phone number, fax number, and/or e-mail address of any third parties an employee met with for a qualifying exigency, along with a short meeting description.

Supporting documentation, such as a copy of a meeting announcement for a military-sponsored informational meeting, documentation confirming school-related activities, or copies of bills for legal or financial services.

Agencies can take steps to verify leave certification, including contacting third parties identified by the employee.

Federal employees who fail to provide sufficient documentation supporting their FMLA leave requests run the risk of being declared absent without leave (AWOL)

. Such determinations can lead to serious personnel actions, including removal from the federal service. Federal employees experiencing problems over their FMLA leave procedures should immediately contact a federal employment

attorney.