

Benefits Alert

December 2009

Defense Authorization Law Expands FMLA's Family Military Leave Provisions

President Obama has signed the National Defense Authorization Act for Fiscal Year 2010 (P.L. 111-84), which amends the Family and Medical Leave Act's (FMLA) family military leave provisions. These FMLA amendments became effective on October 28, 2009.

TEN HUT

You may want to review your family military leave policy in light of these new amendments. The new amendments make these changes.

- Qualifying exigency leave now extends to family members of soldiers who are in the regular Armed Forces. Previously, leave applied to family members of service persons who are in the National Guard or Reserves.
- The requirement that

qualifying exigency leave be in support of a contingency operation has been eliminated. *Upshot:* For soldiers in the regular Armed Forces, covered active duty means duty during deployment to a foreign country. For service persons who are in the National Guard or Reserves, covered active duty means duty during deployment to a foreign country under a call or order to active duty.

- Military caregiver leave is extended to family members of veterans who were members of the Armed Forces (including the National Guard or Reserves) at any point in time within five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.
- For purposes of military care-

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giver leave, the definition of "serious injury or illness" has been revised to include an injury or illness that existed before the beginning of the member's active duty and was aggravated by service in the line of duty. The definition adds that, for veterans, the injury or illness may manifest itself before or after the member became a veteran. ❖



Robert S. Golden
M. Dennis Guappone
Stephen H. Peck

Expertise
Innovation
Excellence

181 Wells Avenue
Newton, MA 02459
Phone: (617) 969-0100
www.ubserv.com

It's A Lie! But It Didn't Have To Be That Way

Employees don't want to lie, but your company's absenteeism policy may be forcing them into just such an uncomfortable position, if they're calling in sick when they're really dealing with a family member's sickness or other personal issue. Companies may be facing this issue more frequently now, if experts' estimates of the reemergence of the swine flu prove to be even somewhat accurate. Updating your absenteeism policy can clear the air and ease employees' conscience.

MOM AND DAD BOTH WORK. WHO'S WATCHING THE KIDS?

Most absenteeism policies functioned well enough when there was one breadwinner per household. While those households still exist, they're the exception; the rule these days is dual-income households. Single-parent households are also common. These steps can set

your absenteeism policy on the right course for years to come.

Step #1. Track employees' absences. Review payroll records first. Then query employees' managers, if necessary. Those records will tell you when employees called in sick. To find out why employees called in sick, you must ask them. To save face, survey employees anonymously.

Step #2. Adjust your absenteeism policy. A popular option is to lump together all sick days, personal days, and vacation days into paid time off (PTO) banks. Employees, therefore, need not come up with any creative reasons for taking time off. A PTO policy should answer these questions.

- Will employees who run out of paid time off be able to borrow time? If yes, how much and from whom (i.e., from their next year's allocation, or from employees who won't use all of their time)? Will employees

need to present verification of their need to borrow time?

- How much advance notice must employees give of their intention to take a day off?

- Will employees be able to carry over days they haven't used? If yes, how many?

- What happens to days that can't be carried over? Will they be cashed out, or will the unused time be forfeited? Have you amended your 401(k) plan to allow or require contributions of unused time? *Note:* Some state laws don't allow employees' accrued time to be forfeited.

- Will the PTO plan cover all time off, or will some time, such as funeral time, be allocated separately?

Step #3. Discipline as the last resort. The advantage of PTO is that employees don't need to have any reason for taking a day off. But employees who abuse the policy by taking time off during a busy season, or those who continue to take time off after their PTO banks are empty, should be disciplined according to the company's regular disciplinary policy. ❖

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IRS Rolls Out New 401(k) Plan Audit Initiative

The IRS's Employee Plans division is rolling out a new retirement plan audit initiative — the EP Risk Modeling Project. Through this initiative, the IRS seeks to refine the process by which it selects returns for audits. *The eventual upside:* Once the risk model is refined, the IRS says it will leave compliant

plans alone.

WHO'S IN THE HOT SEAT NOW?

Well, the IRS isn't quite saying. What it is saying is that in order to test its new risk model, 200 Form 5500 returns with 401(k) features will receive full-scope priority field examinations. This is exactly what

it sounds like — line-by-line audits at your place of business. Here are a few tips to keep in mind if the IRS comes knocking on your door.

- Don't restrict auditors' access to your premises, or require them to provide personal information (e.g., Social Security number, home address, home phone number, vehicle identification number) before granting access to your office.

- Alert employees to the auditors' presence and remind

Government Launches More Benefits-Oriented Websites

Not long ago, the federal government launched a website that created an evidence-based tool that employers can use to estimate how much diabetes costs, and the potential savings that would result from better diabetes management. The Centers for Disease Control and Prevention (CDC) has now created a similar website devoted to obesity prevention. In addition, the Department of Health and Human Services has created a website for flu prevention and management.

EVERYBODY GET UP AND STRETCH

The CDC's website offers interactive tools that allow you to design an effective worksite obesity prevention and control program, including an obesity cost calculator to estimate how much obesity is costing your company, and how much savings your company could reap with different workplace interventions.

Some employees are obese because they're couch potatoes. But others are obese due to underlying genetic tendencies. It's important to keep that distinc-

tion in mind as you plan your obesity prevention and control program, since some employees may be better at losing weight than others. The website helps you build and promote an obesity prevention program, and provides some tips to get you started.

- Integrate the program into your company's mission and policies.
- Worksite activities don't need to cost a lot of money, but they do need adequate resources, such as giving employees the time to participate.
- Upper management and key employee-leaders must buy into the program.
- Workplace activities must address employees' needs.
- Employees should be involved in planning and implementing activities.

Assessing the effectiveness of any wellness program can be elusive because some factors, such as employee satisfaction, can be hard to measure. The website tries to pin down those factors by breaking the assessment process into process evaluations, which are used to document and assess the program's implementation, and

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IRS Rolls Out New 401(k) Plan Audit Initiative (cont.)

them that they shouldn't talk to, or around, auditors.

- Make auditors comfortable by providing them with ample office space, and give them access to computer termi-

nals if your records are stored electronically.

- Make an audio recording of interviews, but give the IRS advance notice of your intention to do so. ❖

basic operation and outcome evaluations, which help you determine whether the objectives of the program were achieved.

STAY HOME IF YOU HAVE THE FLU

Whether it's the swine flu or the regular seasonal flu, the best advice you can give employees is to stay home until they're fever-free for 24 hours. Or you could do what officials in Pima County, Arizona, are doing — demand that flu-ridden employees stay home, and those who don't risk termination.

But swine flu, which seems to hit younger people disproportionately, could complicate this cold and flu season, as more employees may be forced to stay home with sick kids. Flu.gov provides guidance employers can use to plan for a flu outbreak, including fact sheets for employers and employees.

The employer's fact sheet advises employers to take the following actions.

- Review past time and attendance records to gain an understanding of your company's normal seasonal absenteeism rates.
- Monitor employees for unusual increases in absenteeism.
- Review or establish a flexible flu pandemic plan, and involve employees in developing and reviewing that plan.
- Develop flexible leave policies to allow workers to stay home to care for sick family members or for children if schools dismiss students or child care programs close. Determine, as part of this policy, what documentation employees will need to present. ❖

401(k) News: 2010 COLAs Released

Employees who want to increase their pre-tax contributions into their 401(k) accounts next year are out of luck; the maximum pre-tax contribution remains \$16,500. In addition to the unchanged 401(k) pre-tax contribution amount, the IRS has announced that there will be few cost-of-living pension increases next year. Here's the rundown.

NEW YEAR, OLD AMOUNTS

The maximum pre-tax catch-up contribution employees can make into their 401(k) accounts remains \$5,500 for those who are 50 or older during 2010.

Other pension amounts are as follows.

- The maximum annual defined benefit pension amount remains \$195,000.
- The overall pre-tax contribution, after-tax contribution, and employer matching contribution limit for 401(k) plans (also known as the 415 limitation) remains the lesser of 100% of compensation or \$49,000.
- The annual salary limit for figuring contributions into 401(k) plans remains \$245,000.
- The dollar limitation used to define a key employee in a top-

heavy plan remains \$160,000.

- The dollar limitation used to define a highly compensated employee remains \$110,000.
- The dollar amount for determining the maximum account balance in an employee stock ownership plan subject to a five-year distribution period remains \$985,000; the dollar amount used to determine the lengthening of the five-year distribution period remains \$195,000.
- The minimum compensation amount for employees participating in simplified employee pensions (SEPs) remains \$550.
- The maximum amount employees can defer on a pre-tax basis into a SIMPLE retirement account remains \$11,500. ❖

Ask The Experts

Q. *Under our health plan, employees must work at least 30 hours a week to be eligible for benefits. An employee, who used to work the requisite number of hours, is now working 25 hours a week. As far as we can tell, this change in her work hours is permanent. She would like to change her cafeteria plan election for health benefits. Can she make such a mid-year change?*

A. This employee is entitled to COBRA due to the loss of coverage under the health plan, and she may, depending on your cafeteria plan, change her election mid-plan-year to pay for the COBRA coverage. Cafeteria plans, may, but aren't required to, allow participants who have a change in employment status to change their pre-tax elections mid-plan-year. For cafeteria plan purposes, a change in employment status includes situations where an individual's change in employment impacts his/her eligibility for benefits. Similarly, for COBRA purposes, a qualifying event includes a reduction in hours that impacts the eligibility for benefits.