



ATTORNEYS AT LAW

CLIENT ALERT

On November 17, 2008, the Department of Labor issued revised regulations for the Family and Medical Leave Act ("FMLA"). These regulations are the first significant revisions to the FMLA regulations in over 15 years. The revised regulations will take effect on January 16, 2009. Covered employers (i.e. those with at least 50 employees within 75 miles) need to be prepared to update their FMLA policies, obtain the new FMLA forms, and train employees (particularly their human resources officials, managers and supervisors) about the changes. The revised regulations will affect the following:

- Employees will have a greater burden to explain their need for FMLA leave, and simply calling in sick will not trigger the employer's FMLA obligations.
- There are new forms for employers to use in processing FMLA leave, and some of the forms are mandatory.
- Employers will have enhanced posting requirements.
- Employers will have five business days to notify employees whether their requested leave is designated as FMLA leave, which is an increase from the current requirement of two business days. Failure to provide the required written notice can be considered "interference" with an employee's FMLA rights. The revised regulations also expand the remedies available to employees whose FMLA rights have been violated.
- Employers may retroactively designate leave as FMLA-covered leave if the delay in designating the leave as FMLA-covered leave does not cause harm to the employee or if the parties mutually agree to such retroactive designation.
- There are new requirements to document any disputes between the employer and employee as to whether leave qualifies as FMLA leave.
- Employers may now consider any medical information obtained through ADA, workers' compensation or other benefit processing in determining if an employee is entitled to FMLA leave.
- Employers may now settle past FMLA claims without Department of Labor or court approval, and employers should modify their general releases to cover FMLA claims.
- For the first time, there are regulations addressing service member leave pursuant to the 2008 National Defense Authorization Act. Among other things, the regulations identify what constitutes a "qualifying exigency." There is also a new optional form for processing service member leave.

These are just a few of the changes set forth in the revised FMLA regulations. If you need assistance with any of these matters or any other employment-related matters, please contact Kris Cato at 803-227-2277 or kcato@mgclaw.com; Amy Jenkins at 843-576-2917 or amy.jenkins@mgclaw.com; Edward Rawl at 803-227-4930 or erawl@mgclaw.com; or Tracey Downs at 704-405-4648 or tracey.downs@mgclaw.com with any questions.