

New Ohio Law Requires Employers to Provide Family Military Leave

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The Ohio Military Family Medical Leave Act (the "Act"), effective July 2, 2010, provides eligible Ohio employees the opportunity to take unpaid leave in connection with the military service of certain of the employee's family members.

Eligibility

The Act applies to any employer with 50 or more employees and includes both private and public employees. Employees are eligible for leave under the Act if the employee is the "parent, spouse, or a person who has or had legal custody of a person who is a member of the uniformed services and who is called into active duty in the uniformed services for a period longer than thirty days or is injured, wounded, or hospitalized while serving on active duty in the uniformed services." Active duty does not include training, or periods of time for which a person is absent for the purpose of fitness examinations.

To be eligible for leave under the Act, the employee must satisfy the following conditions: (1) be employed with the employer for at least 12 consecutive months and worked at least 1,250 hours in the 12 months preceding commencement of the leave; (2) give at least 14 days notice if the leave is being taken because of a call to duty, or two days notice if the leave is due to injury, wound, or hospitalization (no notice is required in certain life-threatening situations); (3) take leave no more than two weeks prior to, or one week after, the soldier's deployment date; and (4) have no other leave available for the employee's use except sick leave or disability leave.

The Leave

The leave is unpaid and may be taken only once per calendar year. The annual leave is limited to ten days or 80 hours, whichever is less. During the leave, the employer must continue to provide benefits to the employee on the same basis as before the leave.

An employer may not terminate, fire, discipline or retaliate in any way against an employee for taking leave under the Act. At the conclusion of the leave, the employer must restore the employee to the position the employee previously held or to a position with equivalent seniority, benefits, pay, and other terms and conditions of employment.

Current Policies

The Act prohibits employers from entering into collective bargaining agreements or employee benefit plans that limit or require an employee to waive the rights established by the Act. This provision does not apply to employers who entered into collective bargaining agreements prior to July 2, 2010, that contain provisions that conflict with the Act. Employers will, however, be subject to the Act upon the expiration of the existing collective bargaining agreement.

Interaction with FMLA

While the Ohio law's requirements seem duplicative of FMLA obligations in many respects, there are at least a couple of areas in which the Ohio law appears to be more expansive than the FMLA. Specifically, the Ohio law permits employee leave without regard to whether the employer has 50 employees within a 75-mile radius of the employee requesting leave, unlike the FMLA. In addition, the Ohio law appears to supplement the FMLA, i.e., if the employee has exhausted his or her FMLA leave entitlement, that the employee may still be eligible for leave under the Ohio law.

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