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RECENT FAMILY MEDICAL LEAVE CHANGES DO NOT AFFECT TITLE II FEDERAL EMPLOYEES

In a 762 page ruling, involving approximately 20,000 public comments, the Department of Labor, (DOL) provided leave for families caring for a wounded service member and mandated more reporting requirements for employees who invoke their entitlement to the Family Medical Leave Act (FMLA). The rules affects Title I of FMLA, which covers Postal Service workers, some civilian members of the Department of Defense, and individuals employed on a temporary (one year or less) or intermittent appointment. The new rules will go into effect mid-January, 2008.

The final rules issued by DOL on November 17, 2008 revised Title 29 of the Code of Federal Regulations, Part 825. Title 29 Part 825 is the Department of Labor's Wage and Hour Division which regulates the private sector and some public sector agencies, but not the Federal government. The Federal sector FMLA rules can be found under Title 5, CFR Part 630, Subpart L. Some of the changes include, but not limited to:

- ◆ Employees must follow their agencies' customary call-in procedures unless there are abnormal circumstances. This differs from the current provision that allows employees to notify up to two full business days after an absence.
- ◆ A clarification that time spent on light duty does not count against an employee's leave entitlement.
- ◆ A consolidation of employer notice requirements to "clear up" conflicting provisions and time periods.
- ◆ A stipulation that when an employee takes 30 weeks leave, employers are not required to provide 12 additional weeks of FMLA leave, an update that DOL says puts regulations in line with *Ragsdale v. Wolverine World Wide Inc.*, [102 FMSR 90001](#), 535 U.S. 81 (U.S. 2002). The current requirement, known as the "categorical" penalty, is "inconsistent with the statutory limit of only 12 weeks of FMLA leave and contrary to the law's remedial requirement that an employee demonstrate individual harm." Employers can be liable, if an employee suffers harm because he wasn't properly notified of the rules.

Non-Competitive Appointments

Veteran Recruitment Appointment (VRA)

Managers can use the VRA appointing authority to hire Veterans non-competitively up through GS-11 or equivalent under another pay system. Veterans must meet the basic qualification requirements for the position. The VRA eligible serves on an excepted position for a 2-year period and are under a training program if they have less than 15 years of education. The veteran must agree to participate in the training program. Upon successful completion of the 2-year period the veteran can be non-competitively converted to a career or career-conditional appointment.

The eligibility requirements for a VRA appointment are: Veterans who served on active duty in the Armed Forces during a war declared by Congress; Veterans who served in a campaign or expedition for which a campaign badge has been authorized; Veterans who have been separated from active duty within the past 3 years. The veteran must have served on active duty, not active duty for training. The veteran must provide the DD214 to establish eligibility.

Thirty Percent or More Compensable Veterans

A thirty percent or more compensable disabled veteran may be noncompetitively appointed to a position for which they are qualified. The veteran needs to provide a DD214 (member 4 copy), a completed SF-15 and a VA letter proving that they are a compensable vet. The thirty percent disabled veteran is initially given a temporary appointment. The duration may vary depending on type of disability and position requirements. This provides the manager a period of time to evaluate whether the veteran can perform the full range of duties. Once the manager has determined that the disabled veteran can successfully perform the duties of the position, the veteran can be converted to a career-conditional appointment.

People with Disabilities Employment Program

People with disabilities can be hired, if they qualify, noncompetitively through the use of excepted service appointing authorities. Excepted service appointing authorities for hiring people with disabilities were developed to provide an opportunity for individuals with disabilities to show that they can do the job and to circumvent any barriers that managers and supervisors may have. It emphasizes that candidates must be fully qualified in accordance with OPM Qualification Standards Handbook and be able to perform the essential functions of the position with or without reasonable accommodation.



Individuals with disabilities can be certified as eligible by the State vocational rehabilitation agency or Department of Veterans Affairs. After two years of service the person can be non-competitively converted to a career-conditional appointment or management has the option to leave them on the excepted service appointment for as long as they wish.

Federal Career Intern Program

The Federal Career Intern Program is designed to help agencies recruit and attract exceptional individuals into a variety of occupations and to prepare them for careers in the analysis and execution of public programs. It requires a 2-year formal training and development program and initial entry can be at grade levels GS-5, 7, and 9 levels or equivalent. The intern is appointed to a 2-year internship in the excepted service. Upon successful completion of the internship, the intern may be non-competitively converted to a career-conditional appointment.

For more information on non-competitive appointments please contact your servicing HR Specialist.

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THE LEGAL EAGLE

Religious Holiday Observances

With the autumnal equinox behind us and the winter solstice ahead, we find ourselves in that bustling season where our year is ending in various ways, and the more patriotic holidays are giving way to the more parochial. So, in the back-to-school spirit, here's a pop quiz for management:

Which religious holidays require accommodation?

Is it just the ones that are also federal or state public holidays, like Christmas? Or ones that are observed by most practicing members of an established religion, such as Ramadan or Rosh Hashanah?

What about less popular feasts such as Samhain, the Wiccan High Holy Day that falls on Halloween? All of the above? None of the above?

The answer is: it depends (you didn't really think you would get a straight answer from a lawyer, did you?). To clarify, it is not the holiday itself that must be accommodated, but rather the sincerely held beliefs of the individual requesting time off or away from duty.

An employee can claim religious discrimination if he or she can show:

*The employee has a bona fide religious belief, the practice of which conflicts with an employment duty.

*The agency was informed of this belief and of the conflict.

*The agency enforced the job requirement against the employee in spite of the conflict. Once this is

established, the employer would have to reasonably accommodate the employee or demonstrate that accommodation would have posed an undue hardship on operations.

It is important to note that the employee must first put the employer on notice of the potential conflict between his or her assigned duties and the religious observance. For example, the employee must inform the employer that she sincerely believes she must be home by sundown on a particular day or absent from her workstation at certain intervals to heed a call to prayer, and why. Then it's up to management to make reasonable, good faith efforts to accommodate the employee's sincerely held beliefs.

Here is the rule of law:

To the extent that modifications in work schedules do not interfere with the efficient accomplishment of an agency's mission, an employee whose personal religious beliefs require that he or she abstain from work at certain times of the workday or workweek must be permitted to work alternative work hours so that the employee can meet the religious obligation. The Equal Employment Opportunity Commission (EEOC) has established that the term "personal religious beliefs" should be construed broadly to include sincerely held moral and ethical convictions. In addition, religious accommoda-

tion may not be conditioned upon membership in an established religion, or upon the employer's understanding of the dictates of a particular religion. As far as the EEOC is concerned, necessity is in the eye of the religious observer. Notably, the EEOC has found that it is not an act of discrimination against other employees of a different religion to ask them to cover any extra shifts that result from such an accommodation, as long as all the non-requesting employees are affected equally. The Office of Personnel Management (OPM) has provided the following practical guidelines for approving adjusted work schedules for religious observances:

*Agencies should require employees to submit a written request for an adjusted work schedule in advance. *An employee should specifically state that his or her request for an adjusted work schedule is for religious purposes and should provide acceptable documentation of the need to abstain from work. When deciding whether an employee's request for an adjusted work schedule should be approved, a supervisor should not make any judgment about the employee's religious beliefs or his or her affiliation with a religious organization. A supervisor may disapprove an employee's request if modifications of an employee's work schedule would interfere with the efficient accomplishment of the agency's mission.



(religious holiday observances continued)



An employee's request for time off should not be granted without simultaneously scheduling the hours during which the employee will work to make up the time. This provides a clear record of the employee's adjusted work schedule. An employee should be allowed to accumulate only the number of hours of work needed to make up for previous or anticipated absences from work for religious observances. If an employee's request is approved, a supervisor may determine whether the alternative work hours will be scheduled before or after the religious observance. If an employee is absent when he or she is scheduled to perform work to make up for a planned absence for a religious observance, the employee must take paid leave, request leave without pay, or be charged absent without leave, if appropriate. (These are the same options that apply to any other absence from an employee's basic work schedule.)

The hours worked in lieu of the normal work schedule do not create any entitlement to premium pay (including overtime pay). Notably, the guidelines permit the employee to reschedule work hours to make up for "previous or anticipated" absences. This means that, contrary to chronological logic, an employee can actually use compensatory time that has not yet been accrued for this limited purpose.

Of course, the employee may elect to use accrued annual leave or other paid time off, such as earned compensatory time off, earned compensatory time off for travel, or earned credit hours for this purpose, but, based on the above, cannot be required to do so. For employees who are not on an hourly schedule, certain alternatives may be made available on a temporary or permanent basis, within rules established by the agency. These might include an Alternative Work Schedule (AWS) instead of a traditional fixed work schedule (e.g., 8 hours per day, 40 hours per week), a Compressed Work Schedules (CWS) (a fixed work schedule that enables full-time employees to complete the basic 80-hour biweekly work requirement in less than 10 workdays), or a Flexible Work Schedules (FWS) (consisting of workdays with core hours and flexible hours).

Compliments of the Ft Belvoir, SJA

Civilian Training

Did you know that the Ft. Belvoir CPAC publishes a FY Training Schedule? If you responded yes, do you know where to find it? If you didn't know, would you like to know? Each fiscal year the CPAC offers a series of courses to its serviced activities and the community in general. Courses include 5 **Pre-Retirement courses** for **CSRS** employees and 5 courses for **FERS** employees, courses on **Professional Writing, Effective Presentations, Grammar, Team Building, Conflict Resolution** and **Interpersonal Communications!** A valuable WEB site which is especially useful for Leadership training is the Army Management Staff College WEB site – www.amsc.belvoir.army.mil. On this site, you will find an incredible amount of information.

The retirement and presentations classes run for 3 days, the other classes are 2 days in length – classes run from 0830-1530 and are held at the CPAC, Building 320. There is a cost for each of the courses which may be paid by the employee's organization. The vendors have all been teaching for the CPAC for as long as 30 years and they are all terrific.

Where do I find the schedule? -- The FY 09 Schedule is located on the Ft. Belvoir WEB page – www.belvoir.army.mil, located under the heading of Civilian Personnel located on the left hand side of the page. It includes the course offerings by month and all the details of the application process. Also included are the individual course costs and vendor information.

Don't see what you need and have at least 15 prospective students? Call the CPAC to see about arranging a course just for your activity. If you would like any additional information on civilian training, please email or call Steve Crandall – Stephen.crandall@us.army.mil or 703-704-3005.



Supervisors under NSPS

How is a supervisor classified under NSPS?

The same basic rules apply under NSPS that applied under the GS system. The difference is that no specific number of employees must be supervised. Subchapter 1920 guidance states, “A supervisory position cannot be established on the basis of only one subordinate position. The establishment of supervisory positions is based on the need for the position; the cost of the position; and other business-based decisions”. Managers must ensure that all supervisors meet the criteria for a supervisory position under Subchapter 1920 guidance.

Under NSPS Supervisory classification elements, a supervisor must: (1) assign work to subordinates; (2) provide technical oversight; (3) develop performance plans/rate employees; (4) interview candidates/recommend hiring/promotions; (5) take disciplinary measures; (6) identify/provide/arrange developmental and training needs; and (7) hear/resolve complaints from employees.

These elements must be performed to be assigned as a 1st level NSPS civilian supervisor. An organization with only military subordinates cannot employ a civilian supervisor under NSPS. In this case, the following supervisory elements listed above cannot be met: #3 (a civilian supervisor cannot be the official signatory, i.e., of an Officer Efficiency Report), #4 (a civilian supervisor cannot 'hire' military personnel), #5 (a civilian supervisor cannot exercise Uniform Code of Military Justice), and to a lesser degree #6, (a civilian supervisor can only authorize civilian training). Having military, contractor, volunteer, or Local National subordinates can be used as strengthening elements in classifying a civilian NSPS supervisory job, but such workers cannot be the sole source of subordinates.

As a manager, you should never have supervisors with only one subordinate employee. Good organizational management always reflects effective supervisor-employee ratios, eliminates unnecessary layering, and effectively supports the mission of the organization.

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LABOR MANAGEMENT EMPLOYEE RELATIONS BRANCH

LMER BRANCH

On February 6, 2008, The Office of Personnel Management (OPM) published in the Federal Register at 73 FR 6857 a proposal to eliminate the time-in-grade (TIG) restriction found in [5 CFR part 300](#), subpart F. The restriction applies to Federal employees in competitive service General Schedule positions at grades 5 and above. These employees qualify for promotions to higher grades if they have: (1) At least one year of specialized experience equivalent in difficulty to the next lower grade level or (in some cases) the equivalent education; and (2) service of at least 52 weeks at their current grade (known as "time in grade"). OPM is **eliminating** the time-in-grade restriction on advancement to competitive service positions in the General Schedule. The rule eliminates the 52-week time-in-grade requirement for promotions. Employees must continue to meet occupational qualification standard requirements and any additional job-related qualification requirements established for the position. The rule is effective March 9, 2009, however application may not begin until DoD and Army have issued implementing guidance.

Federal Employee's Compensation Act Word Search

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