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Afghanistan deployment to test new FMLA rules

Tresa Baldas / Staff reporter
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More troops in Afghanistan could mean more Family Medical Leave Act headaches for employers.

Labor and employment lawyers say the Obama administration's recent announcement that 17,000 more troops are headed to Afghanistan will put to the test some new FMLA changes that give certain military families new leave rights. Under the amendments, which took effect on Jan. 16, a wide range of relatives of military personnel will be eligible for FMLA leave because their lives have been disrupted by the deployment of loved ones.

'Whole new area'

Under the new rules, aunts, uncles, grandparents and first cousins of military personnel will be able to use up to 12 weeks of unpaid leave, unlike nonmilitary families, in which only spouses, children and parents can take FMLA time.

The new rules also define the circumstances in which military families can take FMLA leave. These so-called "qualifying exigencies" include short-notice deployment, military events, child care and school activities, counseling, financial and legal arrangements, rest and recuperation and post-deployment activities.

Attorneys, meanwhile, are warning employers to be prepared for a slew of new FMLA requests.

"With a 17,000-member call-up, and potentially more down the road, I think it's going to impact a lot of employers. I would expect to see more employees qualifying for it, and asking for it," said Wayne Pinkstone, a partner in the Philadelphia office of Atlanta's Fisher & Phillips who gave a seminar on the new FMLA changes in Philadelphia last week.

Pinkstone noted that the FMLA military provisions apply only to relatives of those in the Reserves or National Guard — not career military personnel — who have to suddenly leave their jobs to go into

a combat zone. This may create some confusion for employers, who have traditionally granted FMLA for medical reasons.

"Now there's this whole new area that employers need to be aware of," Pinkstone said. "Employers who may not consistently keep up with federal legislation could potentially stumble."

Kevin J. White, a partner in the labor and employment practice in the Houston office of Richmond, Va.-based Hunton & Williams, echoed similar concerns, saying the new military leave provisions will have a "significant impact" on employers. "A broad range of activities qualify for protected military leave, and employers now have to have a system that tracks both traditional FMLA leave and the new military leave," White said.

White advised employers to update their FMLA policies and forms and monitor both traditional FMLA leave and military leave periods. This, he stressed, should be placed in the hands of trained human resources specialists, not supervisors.

Tina Maiolo, a management-side attorney at Washington's Carr Maloney, sees the recent deployment of troops as a good wake-up call for employers.

"Unfortunately, most employers aren't ready yet. Even though they know these regulations are coming, they need to pick it up to speed very fast," Maiolo said. "The FMLA had a lot of changes that I think are flying under the radar."