

FEBRUARY 25 2013
NEW FMLA REGULATIONS REQUIRE ACTION BY MARCH 8, 2013

To celebrate the 20th anniversary of the Family & Medical Leave Act (“FMLA”) on February 5, 2013, the U.S. Department of Labor (“DOL”) has issued new FMLA regulations that will take effect on March 8, 2013. *Employers should immediately review the changes to the regulations and then make necessary revisions to their FMLA policies and procedures.*

Summary of Major Changes. The major changes to the FMLA regulations may be summarized as follows:

- **Clarify Calculation of Intermittent and Reduced Schedule Leave.** The rules for calculating intermittent and reduced schedule FMLA leave have been clarified. *We anticipate that these clarifications will be of particular interest to our clients (read below for more details).*
- **Protection for Veterans and Military Families.** Families of eligible veterans are provided with the same job-protected FMLA leave currently available to families of military service members, and more military families are able to take leave for activities that arise when a service member is deployed.
- **Protection for Airline Personnel.** Airline personnel and flight crews are able to make better use of FMLA leave.

Of Particular Interest: Calculation of Intermittent and Reduced Schedule Leave. Although all of the changes to the FMLA regulations are important, we anticipate that our clients will be most interested in the clarifications about calculating intermittent and reduced schedule leave. These clarifications may be summarized as follows:

- **Use smallest increment used for other leave.** An employer must track FMLA leave using the smallest increment of time used for other forms of leave (subject to a one-hour maximum). However, this does *not* require an employer to track FMLA leave using the smallest available increment possible under its payroll timekeeping system.
- **Do not count time actually worked as FMLA leave.** An employer cannot count time that an employee *actually works* for the employer against the employee’s FMLA leave entitlement. For instance, if an employee arrives a half hour late to work due to a Serious Health Condition and the employer waives its normal one-hour increment of leave and puts the employee to work right away, only a half hour of leave can be counted against the employee’s FMLA entitlement. (The employer can, however, require the employee to use one-hour of paid leave, if that is the normal increment in which the paid leave is taken.)
- **Do not force employee to take unneeded FMLA leave.** Subject to the physical impossibility rule discussed below, an employer may not require an employee to take more FMLA leave than necessary to address the circumstances that created the need for FMLA leave. For instance, if an employee only needs two hours of FMLA to attend a medical appointment, the employer cannot force the employee to take half a day of FMLA leave.

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- **Physical impossibility exception is limited.** If it is physically impossible for an employee to start or end work midway through a shift, the entire period that the employee is forced to be absent can be counted against the employee's FMLA leave entitlement *only in the most limited circumstances*, and the employer bears the responsibility to restore the employee to the same or equivalent position as soon as possible.

Required Actions by March 8, 2013. As a result of the new FMLA regulations, employers should take the following actions before March 8, 2013:

- **Education.** Become familiar with the changes to the FMLA regulations.
 - As a service to our clients and the public, we have prepared a document that shows the "redlined" changes between the new and former regulations. That document can be downloaded [here](#).
 - The DOL has also prepared a helpful chart that summarizes the differences, which can be viewed [here](#).
 - The new FMLA regulations can be downloaded [here](#).
- **Amend FMLA Policies and Procedures.** Amend FMLA policies and procedures to ensure compliance with the new regulations. If we draft your Employee Handbook and it has an FMLA policy in it, we will contact you soon about updating the policy for compliance with the new regulations.
- **Post New FMLA Poster.** Post the DOL's new FMLA poster, which was issued in conjunction with the new regulations. The poster can be downloaded [here](#).
- **Download Revised FMLA Forms.** Download the DOL's updated FMLA forms, including a new form for certification of the serious injury or illness of a veteran. The forms can be downloaded [here](#).

If you have questions regarding the new FMLA regulations or would like assistance with revising your FMLA policies and procedures, please feel free to contact Jim Spencer at (316) 660-6109 or jspencer@hinklaw.com or Trinidad Galdean at (316) 660-6135 or tgaldean@hinklaw.com.