

Introducing the New and Improved Family Medical Leave Act

Have you checked your bulletin boards lately? Employers who have yet to hang the new Family and Medical Leave Act (FMLA) poster in their break rooms are urged to do so right away.

Revisions to the FMLA that became law earlier this year took effect on March 8, 2013, and the FMLA's new poster, which was required to have been on display no later than March 8, outlines all of the changes to the Act. Employers should also plan to update their employee handbooks to reflect how these changes will impact their employment policies and forms.

One change involves how employers tally employee-leave hours under the FMLA. Under the 2008 rules, employers were required to track FMLA leave in the shortest increment of time used to tally other employee leave. Now employers are prohibited from requiring employees to take more leave than they ask for and employers may only deduct time that the employee is actually away from work.

“Employers should also plan to update their employee handbooks to reflect how the changes will impact employment policies and forms.”

The 2013 changes also revise the wording of FMLA's "physical impossibility" provisions. Previously, in cases where it was physically impossible for an employee to start or end work mid-way through a shift, the entire period the employee was absent was counted against the employee's FMLA leave entitlement. Under the 2013 changes, this provision is to be applied "in only the most limited circumstances," and the employer bears the responsibility to restore the employee to the same or equivalent position as soon as possible.

Another regulatory change involves the application of the Genetic Information Non-Discrimination Act (GINA) confidentiality provisions to FMLA records. So, for example, employee genetic information received after November 21, 2009 must be maintained separately from other FMLA-related documents, and the disclosure of such information is subject to additional limitations.

Continued on Reverse>>



About the Firm

In 2012 Shapiro Sher Guinot & Sandler was named the top medium-size law firm in Maryland for "Business & Transactions" by Super Lawyers, a division of Thomson Reuters. Founded by renowned sports lawyer Ronald M. Shapiro in 1972, the firm represents clients in numerous practice areas, including employment law, litigation, corporate, real estate, tax, and banking.

Shapiro Sher Guinot & Sandler's **Employment Law Group** is co-chaired by **Eric R. Harlan** and **Renée Lane-Kunz**. They are prepared to assist organizations with a wide spectrum of employment law matters, including recruiting and hiring practices, employee handbooks, discrimination matters, executive compensation, wrongful termination claims, and issues involving Title VII of the Civil Rights Act, The Family and Medical Leave Act, and The Americans with Disabilities Act. The Employment Law Group also assists with employment, severance, non-disclosure and non-compete agreements, among other matters.

Renée Lane-Kunz offers ongoing employment counsel to small and mid-sized companies as well as schools and institutions. She works closely with clients to help them anticipate and avoid litigation and regulatory complications. From handbooks to employment agreements, to general HR policies, she is ready to provide employers the tools they need in today's legal environment. As she brings to her practice extensive HR management experience in the hospitality industry, she fully appreciates the concerns of business owners.

Eric R. Harlan is a trial lawyer dedicated to the vigorous representation of clients in litigation. He has achieved favorable results in employment-related matters including claims involving violations of federal and state anti-discrimination laws, actions to enforce non-compete and non-solicitation agreements, wrongful discharge, and wage-and-hour litigation.

Most of the other 2013 changes apply to military personnel. For example: (a) the term "Military Members" now includes members of the National Guard and the Reserves in addition to regular Armed Forces personnel; (b) "covered active duty" now requires deployment to a foreign country; (c) qualifying exigency leave to care for a military member's parent has been added when that care results from the military member's covered active duty; and (d) the amount of time an eligible employee may take for "Rest and Recuperation" qualifying exigency leave is expanded from 5 to 15 days. Other military and veteran-related changes may be reviewed in greater detail on the U.S. Department of Labor website.

Though not a focus of this latest round of FMLA changes, employers should also consider whether the illness or injury involved in an employee's request for FMLA leave rises to the standards of the Americans with Disabilities Act (ADA). If so, the employer may be subject to additional "reasonable accommodations" requirements.

Details of the FMLA's 2013 changes, including a side-by-side comparison of the 2008 rules and the 2013 changes, may be found on the U.S. Department of Labor website at www.dol.gov. You may also contact **Renée Lane-Kunz**, co-chair of Shapiro Sher Guinot & Sandler's Employment Law Group at rlk@shapirosher.com.
