Growing Number of States Passing Family Military Leave Acts

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With the continuing demands on the military Reserve and National Guard, a growing number of states have been passing Family Military Leave Acts giving soldiers' family members limited unpaid leave entitlements. In general, the acts allow the family members of active duty soldiers to take unpaid leave during periods leading up to or immediately following their family member's deployment and also during periods of leave while still on active duty. The new statutes vary, but employers should be cognizant of these new laws and prepared to adjust their leave procedures to comply. Currently, Illinois, Indiana, Maine, Minnesota, Nebraska, and New York have passed these laws.

Illinois
The Illinois Family Military Leave Act requires employers with 15 to 50 employees to provide up to 15 days of unpaid family military leave to the spouse or parent of a soldier called to military service lasting longer than 30 days. Employers with more than 50 employees must provide up to 30 days of unpaid leave. During the period of leave the employee’s health benefits must be maintained at the expense of the employee. Additionally, the employer cannot take any adverse actions against the employee for exercising his or her rights under this act. The employer has some rights under this act, as well. The employee must provide the employer with 14 days of notice prior to taking 5 or more days of leave. Additionally, employees are not eligible for leave under this act unless they have exhausted all paid vacation, personal, or any other leave, except for sick or medical leave, that might be granted to the employee.

Indiana
The Indiana Military Family Leave Law went into effect July 1, 2007. Under this act, employers with 50 or more employees must provide 10 days of unpaid leave to the spouse, parent, grandparent, or sibling of the person who is ordered to active duty. To be eligible, the employee must have worked for the employer for the 12 months prior to the leave date, and must have worked at least 1,500 hours during those 12 months. Additionally, the employee can only take the leave during three periods: 1) the 30 days before active duty orders are in effect; 2) the 30 days following the termination of the person’s active duty; or 3) while the person is still on active duty but is on leave. Additionally, the employer has the right to require verification from employees of their eligibility under this act, as well as 30 days’ written notice of the requested leave, when it is possible. The employee’s health benefits can continue during the leave period at the employee’s expense. Finally, the employee must be restored to the same position or one of equal status when he or she has returned from leave.

Maine
The current Family Military Leave Law requires employers with 50 or more employees to provide up to 15 days of unpaid leave to the spouse, domestic partner, or parent of the person ordered to active duty for a period of 180 days or longer. The employee must have been working for the same employer for 12 months or longer and for a minimum of 1,250 hours during the previous 12 months. Employees currently are eligible to take leave under this act only during the 15 days immediately prior to deployment or during the 15 days immediately following deployment. An employee who requests leave for 5 days or longer must notify the employer in writing at least 14 days prior to the leave. Additionally, the employer has the right to require certification that the employee is in fact eligible for leave under this act. As of September 20, 2007, an amended Family Military Leave Law will become effective. The new law will make the Family Military Leave Law applicable to employers with 15 or more employees. Additionally, employees will be able to take leave not only during the 15 days prior to and following deployment, but also during periods when the person is on leave during active duty.

Minnesota
Employers must grant the parent, child, sibling, or spouse of a person killed or injured while on active
duty in the military up to 10 days of unpaid leave. The employer has the right to require the employee to use any paid leave, except for sick or medical leave, prior to taking any unpaid leave under this act. The employee is required to give the employer only as much notice as is possible prior to taking the leave. Additionally, employers are required to provide up to 1 day unpaid leave for the parent, child, sibling, or spouse of the person ordered to or returning from active duty to attend the send-off ceremony or homecoming.

Nebraska
Employers in Nebraska with 15 to 50 employees are required to provide up to 15 days of unpaid family military leave to the parent or spouse of a person being called to active duty for longer than 179 days. Employers with more than 50 employees must provide up to 30 days of unpaid family military leave. To be eligible under this law, the employee must have worked for the employer for at least 12 months prior to the requested leave and must have worked for at least 1,250 hours during that time period. An employee who requests leave for longer than 5 days is required to give the employer at least 14 days’ notice prior to the time the leave is going to begin. Additionally, employers are required to restore the employees to their original or equivalent positions when they return from their leave. While on leave, employees can continue to receive their health benefits at their own expense.

New York
When the New York Family Military Leave Law became effective in August of 2006, it was the first state to have a family military leave law requiring employers to provide unpaid time off to family members of those on active duty in the military. The law requires employers with 20 or more employees to provide the spouse of a person on active duty in a combat theater or zone of operations up to 10 days of unpaid leave. Under the New York law, time off may only be taken while the person in the military is on leave from active duty. To be eligible for leave under this law, the employee must work for the employer from which leave is sought for at least 20 hours per week. This law does not require any minimum length of service for eligibility. Additionally, the employee is not required to give the employer notice prior to taking leave. Also, employers are not permitted to retaliate against employees taking this leave.

Jackson Lewis attorneys are available to answer inquiries regarding these new laws and assist employers in achieving compliance with their requirements.