

**HB**

**347**

# Alaska State Legislature

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## Representative Pete Petersen Serving Northeast Anchorage and Muldoon

### Sponsor Statement

#### HB 347– Leave for Military Spouses

*"An Act allowing certain teachers, public employees, and private sector employees to take leave without pay when their spouses are on leave from deployment in a combat zone."*

House Bill 347 will require employers to grant leave without pay to spouses of military personnel who are deployed during a period of military conflict in a geographic area that is designated a combat zone by the President of the United States, and are on leave from military deployment.

This law will apply to school districts, state and local governments, and private sector employers with 20 or more employees. It will allow the employees to take up to ten days of unpaid leave to spend time with their spouses before they return to combat.

Current federal law allows some military spouses to take up to 12 weeks of job protected leave in similar situations, but it is limited to family members of the National Guard and Reserves. Spouses of service members in the Regular Armed Forces do not qualify for leave under the federal law.

Under this legislation, Alaska would join California, Illinois, Indiana, Maine, Minnesota, Nebraska, New York, Oregon and Washington in passing similar laws to protect the jobs of military spouses.

# FISCAL NOTE

STATE OF ALASKA  
2010 LEGISLATIVE SESSION

Fiscal Note Number: \_\_\_\_\_  
 Bill Version: HB 347  
 () Publish Date: \_\_\_\_\_

Identifier (file name): HB347-DOA-DOPLR-03-02-10 Dept. Affected: Administration  
 Title: "An Act allowing certain teachers, public employees, and private RDU Central Administrative Services  
sector employees to take leave without pay ..." Component: Personnel  
 Sponsor: Rep Petersen  
 Requester: (H)EDC Component Number: 56

**Expenditures/Revenues** (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information						
		FY 2011	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
<b>OPERATING EXPENDITURES</b>								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
<b>TOTAL OPERATING</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

<b>CAPITAL EXPENDITURES</b>								
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<b>CHANGE IN REVENUES ( )</b>								
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**FUND SOURCE** (Thousands of Dollars)

1002 Federal Receipts								
1003 GF Match								
1004 GF								
1005 GF/Program Receipts								
1037 GF/Mental Health								
Other Interagency Receipts								
<b>TOTAL</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>	<b>0.0</b>

Estimate of any current year (FY2010) cost: \_\_\_\_\_

**POSITIONS**

Full-time								
Part-time								
Temporary								

**ANALYSIS:** (Attach a separate page if necessary)  
 This bill will have no fiscal impact on the Division of Personnel and Labor Relations.

Prepared by: Nicki Neal, Director Phone 465-4429  
 Division: Personnel and Labor Relations Date/Time 3/2/10 12:00 PM  
 Approved by: Kevin Brooks, Deputy Commissioner Date 3/2/2010  
Department of Administration

# HB 347

## Sectional Summary

**Section 1.** Applies to teachers taking leave without pay under this Act. Establishes that leave taken under this Act is not an interruption of service for retirement or tenure purposes.

**Section 2.** Allows teachers to take 10 work days of unpaid leave when the teacher's spouse is a member of the armed forces on leave from deployment in a combat zone. Advance notice of a leave request is not required, and the request may not be denied.

This section allows the teacher to continue to receive medical benefits for the duration of leave taken, and protects the teacher from retaliation by the employer.

**Section 3.** Requires employers to post notice of this leave entitlement in the workplace. The state will provide copies of the notice free of charge upon request.

**Section 4.** Adds a new section to Title 23 which extends the leave entitlement described in section two of this summary to employees of private employers with 20 or more employees. Similarly, this section requires that an employer post notice of this entitlement, and provides a mechanism for enforcement.

**Section 5.** Amends the Alaska Family Leave Act to apply this spousal leave requirement to the executive, judicial, or legislative branch; state corporations or councils; and the University of Alaska.

**Section 6.** Clarifies that public officials who are otherwise exempt from the Alaska Family Leave act are eligible for spousal combat leave under this act.

**Please note:** This sectional summary should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

**Subject:** FW: SB 278 - Mandatory time off

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**From:** autotechofseward@yahoo.com [mailto:autotechofseward@yahoo.com]

**Sent:** Thursday, March 04, 2010 10:36 AM

**To:** Rep. Paul Seaton

**Subject:** SB 278 - Mandatory time off

Please reply to [autotechofseward@yahoo.com](mailto:autotechofseward@yahoo.com)

This bill mandates a new employee benefit on employers without consideration for the economic or logistic costs to the employer and other employees. It interjects the state into an area of employee benefits that should be left to the employment arrangements between employers and employees. By mandating this policy on employers, you limit the ability of an employer to structure the benefit package to fit the unique needs of its employees.

While we appreciate the concern for spouses of those serving as a members of the armed forces of the United States, legislation allowing an employee to take leave without prior notice to the employer presents a special difficulty to both Alaskan employers and employees. Such requirements cause others to work extra time with no prior notice. Depending on the position of the individuals and number of employees involved, it could disrupt the entire business operation.

Sincerely,

Mr. Richard Perea  
Owner  
Autotech Automotive LLC  
33394 Bear Lake Rd.  
Seward AK 99664  
Email: [autotechofseward@yahoo.com](mailto:autotechofseward@yahoo.com)

## Fact Sheet #28A: The Family and Medical Leave Act Military Family Leave Entitlements

**Notice:** On October 28, 2009, the President signed the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), Public Law 111-84. Section 565 of the 2010 NDAA amends the military family leave entitlements of the Family and Medical Leave Act (FMLA). These amendments expand coverage for “qualifying exigency” leave to eligible employees with covered family members in the Regular Armed Forces and coverage for “military caregiver leave” to eligible employees who are the spouse, son, daughter, parent, or next of kin of certain veterans with a “serious injury or illness”. On December 21, 2009, the President signed the Airline Flight Crew Technical Corrections Act, Public Law 111-119, which modifies the FMLA eligibility requirements for flight crew members. This Fact Sheet does not incorporate these amendments to the FMLA.

The National Defense Authorization Act for Fiscal Year 2008 (2008 NDAA), Public Law 110-181, amended the FMLA to allow eligible employees to take up to 12 workweeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent. The 2008 NDAA also amended the FMLA to allow eligible employees to take up to 26 workweeks of job-protected leave in a “single 12-month period” to care for a covered servicemember with a serious injury or illness. These two types of FMLA leave are known as the military family leave entitlements.

### EMPLOYER COVERAGE

The FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

### EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location where at least 50 employees are employed by the employer within 75 miles.

### MILITARY FAMILY LEAVE ENTITLEMENTS

**Military Caregiver Leave:** A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness up to a total of **26 workweeks** of **unpaid** leave during a “single 12-month period” to care for the servicemember. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember

medically unfit to perform the duties of his or her office, grade, rank, or rating. The "single 12-month period" for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember.)

**Qualifying Exigency Leave:** A covered employer must grant an eligible employee up to a total of 12 **workweeks** of **unpaid** leave during the normal 12-month period established by the employer for FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

Qualifying exigencies include:

- Issue arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of **seven** days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to **five** days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

Spouses employed by the same employer are limited to a **combined** total of 26 workweeks in a "single 12-month period" if the leave is to care for a covered servicemember with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

FMLA leave may be taken intermittently whenever **medically necessary** to care for a covered servicemember with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Under certain conditions, employees or employers may choose to “substitute” (run concurrently) accrued paid leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee’s ability to substitute accrued paid leave is determined by the terms and conditions of the employer’s normal leave policy.

## NOTICE REQUIREMENTS

### Employee Notice

Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. If leave is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable. When the need for military family leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer’s usual and customary notice requirements.

An employee does not need to specifically assert his or her rights under the FMLA, or even mention the FMLA, when providing notice. The employee must provide “sufficient information” to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave. Depending on the situation, such information may include, as applicable:

- that the requested leave is for a particular qualifying exigency related to the active duty or call to active duty status of a covered military member and the anticipated duration of the leave;
- that the leave is for a qualifying family member who is a covered servicemember with a serious injury or illness and the anticipated duration of the leave.

When an employee seeks leave due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

### Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under the FMLA. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring. Employers may use the notice prepared by U.S. Department of Labor to meet this requirement.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, including a reason for non-eligibility if the employee is determined not to be eligible. Such eligibility notice may be oral or written and should, generally, be given within five business days of the request for FMLA leave. Subsequent eligibility notice in the same 12-month leave period may be required when an employee’s eligibility status changes. Employers also must inform employees of their rights and responsibilities under the FMLA, including giving specific written information on what is required of the employee.

When the employer has enough information to determine that leave is being taken for an FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave. The employer must designate leave that qualifies as **both** leave to care for a covered servicemember with a serious injury or illness **and** leave to care for a qualifying family member with a serious health condition as leave to care for a covered servicemember in the first instance. The designation notice must be in writing and,

generally, must be given within five business days of the determination. An employer also must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA entitlement. Employers may use the optional forms WH-381 and WH-382 prepared by the U.S. Department of Labor to meet these notification requirements.

## **CERTIFICATION REQUIREMENTS**

Employers may require that an employee's request for military family leave be supported by an appropriate certification. An employer may require that:

- leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party;
- leave to care for a covered servicemember with a serious injury or illness be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

Second and third opinions and recertification are not permitted for certification of a covered servicemember's serious injury or illness or of a qualifying exigency. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, an employer may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting. Employers may use the optional forms WH-384 and WH-385 prepared by the U.S. Department of Labor for obtaining certifications for qualifying exigencies and military caregiver leave, respectively.

## **UNLAWFUL ACTS**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA.

## **ENFORCEMENT**

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4-USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
**Contact Us**

## Why We Need a Military Family Leave Act:

Written Testimony

March 3, 2010

Submitted by:

Stacy Bannerman, Army National Guard Blue Star Wife  
Medford, OR 97504

Author of *When the War Came Home: The Inside Story of Reservists and the Families They Leave Behind* (2006).

Founder/Director of Sanctuary Weekends™ for Women Veterans

Campaign Creator & Director of:

- Oregon State Military Family Leave Act (H.B. 2744; effective June 2009)
- Proposal to establish a Oregon State Military Family Advisory Council
- Federal Military Family Leave Act of 2009 (HR. 3257; S 1441)
- Federal Military Family Mental Health Care Improvement Act of 2010 (seeking sponsors)

Recipient of the Patriotic Employer Award, National Guard Commission for the Employer Support of the Guard & Reserve, April 2009.

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Thank you to the Committee for considering this important bill to support the families of the troops who are serving or will serve in the war on terror, and other combat deployments. In a few short months, another 30,000 troops will be deploying for Afghanistan - again. The majority of those troops are married with children; most of the spouses left behind work outside the home. Many of us have to choose between work and family when our loved one deploys. It's an impossible choice, and one that military families should never be asked to make when America is at war.

My husband is a Sergeant First Class with the Army National Guard, and his Brigade spent several months training at Ft. McCoy, Wisconsin, more than a thousand miles away from home and family, prior to shipping out for a second tour in Iraq. I had recently moved to southern Oregon to accept a new position in order to implement programs to help military families and veterans. I had been on the job for a few months, and didn't have any sick leave or vacation time available. It would be more than one year before I saw my husband again.

If we support the troops, and by extension, military families, then passing the Military Family Leave Act should be at the top of this nation's to-do list. Because when the soldier goes to war, so does the family. And when the veteran comes home, family support is the single most critical factor in successful reintegration. The demands of the war on terror and the demographics of the 21<sup>st</sup> Century military are very different from the past, and adapting to those realities must, by definition, include expanding support for military families.

For the first years of the Vietnam War, married men were exempt from the draft, and for the duration of the war, married men with children were given deferments so that they wouldn't be deployed as it would constitute too much of a hardship on the families. During Vietnam, the majority of troops were single soldiers serving one tour, and comparatively few citizen soldiers served in combat. Today, the bulk of the boots on the ground in Iraq and Afghanistan are married. They have served, or are serving, multiple tours; and most of them have children. Around 40 percent are citizen soldiers.

The men and women in uniform are serving longer and more frequent tours than ever asked of the military in this nation's history. And so are their families.



March 1, 2010

AMERICAN CIVIL  
LIBERTIES UNION OF  
ALASKA  
1057 W. Fireweed, Suite 207  
Anchorage, AK 99503  
(907) 258-0044  
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[WWW.AKCLU.ORG](http://WWW.AKCLU.ORG)

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ZACH FICK, Anchorage  
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STUDENT ADVISORS

The Honorable Paul Seaton  
Chair, House Education Committee  
Alaska State House of Representatives  
State Capitol, Room 102  
Juneau, AK 99801

Re: **House Bill 347**  
**Inclusion of Domestic Partners: AkCLU v. Alaska**

Chair Seaton:

Thank you for the opportunity to submit written testimony regarding House Bill 347.

The American Civil Liberties Union of Alaska ("ACLU") represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions.

From a constitutional rights perspective, we would request that the Committee make a minor amendment to this important legislation. HB 347 would sensibly and compassionately address the special needs of Alaska's military families.

Pursuant to the Alaska Supreme Court's ruling in *Alaska Civil Liberties Union, et al. v. State of Alaska, Municipality of Anchorage*, 122 P.3d 781 (Alaska 2005) ("*AkCLU v. State*"), the ACLU believes that those military families headed by same-sex domestic partners are also entitled to these benefits.

**Equal Treatment of Domestic Partners**

In *AkCLU v. State*, the Alaska Supreme Court found that the differential treatment of same-sex domestic partners and married couples by the state in conferring of benefits was unconstitutional. This ruling was premised on the fact that same-sex domestic partners are prohibited by law from marrying in Alaska. They are thus excluded from receiving benefits made available to spouses.

The Alaska Supreme Court established that same-sex domestic partners must be treated on equal footing with married couples in the provision of government benefits. The Court held that differential treatment violated the Equal Protection Clause of the Alaska State Constitution since individuals “in committed same-sex relationships are absolutely denied any opportunity to obtain [government] benefits, because [they] are barred by law from marrying their same-sex partners in Alaska or having any marriage performed elsewhere recognized in Alaska.” *AkCLU v. State*, 122 P.3d at 788.

Please note that, in reaching this conclusion, the Court found that treating same-sex couples differently from heterosexual married couples with respect to employment benefits was unconstitutional *and did not survive even the most minimal level of constitutional scrutiny*. *Id.* at 783, 786–87.

**State’s Conferral of Permissive Leave**

Under HB 347, teachers, employees of non-governmental employers, and state employees are granted 10 days’ leave without pay when the “employee’s spouse is a member of . . . [the] armed forces,” and is on leave from a combat zone during a military conflict.

Such permissive leave is a compassionate and thoughtful benefit which the state is conferring on our Alaska families where one member is serving in the military, and recognizes their special needs while honoring their service.

By amending the Bill to read, where applicable, an “employee’s spouse or same-sex domestic partner,” the Alaska State Legislature would avoid creating a constitutional conflict with the Alaska Supreme Court’s ruling in *AkCLU v. State*. Moreover, the Legislature will appropriately recognize and honor all military families, including those headed by couples in committed same-sex partnerships.

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House Education Committee  
*Inclusion of Domestic Partners in H.B. 347*  
March 1, 2010  
Page 3

Thank you again for the opportunity to share our concerns.

Please feel free to contact the undersigned should you require any additional information.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Mittman", with a long horizontal flourish extending to the right.

Jeffrey Mittman  
*Executive Director*  
ACLU of Alaska

cc: Representative Munoz, Vice Chair  
Representative Petersen, Sponsor  
Representative Edgmon  
Representative Keller  
Representative P. Wilson  
Representative Buch  
Representative Gardner  
Representative Tuck, Co-Sponsor  
Representative Kawasaki, Co-Sponsor  
Representative Gruenberg, Co-Sponsor  
Representative Buch, Co-Sponsor



# ALASKA VETERANS FOUNDATION

March 3, 2010

Rep Pete Petersen  
Alaska State House  
Juneau, AK  
REF: HB347

Representative Petersen:

How do we support our troops? Do we do it with ceremonies, political speeches, naming roads after veterans? Or do we stand with them and their families – even in those moments in hell.

For years now we have heard so many across America whine about not being asked to make a sacrifice in this war. Somehow many in our nation don't feel they can have a part in defending our country unless they are in this war. We are often asked, "What can I do?"

When a young woman comes to her boss and says, "My husband has been wounded in Iraq, can I get ten days off, even without pay, to go be by his side." And the boss says no, your job is too important?

When a young man shows up for work and tells his boss, "You know my wife has been serving in Afghanistan for almost a year now, and she called last night and told me she has a couple weeks off but she can't come home. Can I get ten days to go see her, even without pay?" And the boss says, "I just can't spare you right now."

How do we support those few, those very few men and women willing to volunteer to stand guard for America?

This is a moment of truth for each of you. This is the moment you can say, I stand with these men and women and we as a state, as a free people, are willing to suffer losing an employee for 10 days without pay, as a part of our contribution to this effort. As part of our "sacrifice" in this cause.

The Alaska Veterans Foundation, with its conferred membership of almost 80,000 veterans across our state, asks you to stand with our troops and their families as they stand at that door to hell in defense of human freedom and our nation.

We just don't think 10 days leave without pay is too much to ask, if we really are supporting our troops, their missions, and the families who serve with them.

It is an honor,



Ric Davidge  
Chairman

3705 Arctic Blvd #415, Anchorage, AK 99503 907 222 6945 fax 907 222 6933  
[Ricdavidge.ak@eci.net](mailto:Ricdavidge.ak@eci.net)



In Service to America®

## ALASKA STATE COUNCIL

February 24, 2010

Rep. Pete Petersen  
Alaska State House  
Juneau, Alaska

Representative Petersen:

On behalf of the members of Vietnam Veterans of America now living in Alaska we want to express our support for **HB347**. Vietnam Veterans now make up the largest community in our state veteran's population.

The motto of VVA is: *"Never again will one generation of veterans abandon another."* While some find this objectionable, it is a statement of truth based on what our generation of warriors experienced when we served and then came home. It is also our mission, and we take it very seriously.

We support HB347 because it is the right thing to do for those few men and women living in Alaska who volunteer to stand guard for America. It is also the right thing to do for their spouses and families.

When we became aware that spouses were having trouble getting even ten days of unpaid leave to fly to be at the bed side of their loved one after being notified that they had been wounded, or to embrace the one they love while they have a few days off from war, we were shocked. But then we remembered what it was like when we were at war and when we got time off from the rice paddies.

The passage of this bill and its House companion is a statement by our state that we will stand with these families as they fight these wars together in the defense of our nation and our way of life.

The passage of HB347 is a state legislative priority for VVA Alaska as expressed by AK VET PAC.

We ask each of the members of our state legislature to take a stand for what is right, what is noble, and what is in our own best interest and support this needed legislation.

With respect,

  
Albert Baffone  
Vice President

# *Pension Services Int'l., Inc.*

520 E. 34<sup>TH</sup> AVENUE, SUITE 303, ANCHORAGE, ALASKA 99503-4116  
PHONE: 907-562-3938 • FAX: 907-562-1366

## *Facsimile*

To: Members of House Education Committee

Via: e-mail to Denny DeWitt of NFIB

From: Al Tamagni, Sr.

Date: 03/09/2010

Re: **Updated information from US Department of Labor**

**Family and Medical Leave Act National Defense Authorization Act of  
FY 2010 Amendments**

Pages: 6 , including this

We have reviewed the back up data used in the current proposed House Bill #347 regarding leave without pay for employees when their spouses are on leave from deployment in a combat zone.

In reviewing the data, we find that virtually all of the concerns raised in the bill had been addresses in the Family and Medical Leave Act National Defense Authorization Act for FY 2010, which was signed by President Obama on October 28, 2009, Public Law 111-84.

Apparently the Sponsors and Supporters were not aware of this change. This Law and ERISA supersede any state action on this subject.

It is our opinion that the bill need not proceed as the Federal Action has addressed the Concerns in the Public and Private Sectors.

I have attached the following: Exhibit "A"

Exhibit "B1-B4"

DOL Home > WHD > FMLA > NDAA for FY 2010 Amendments

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## Wage and Hour Division (WHD)

### Family and Medical Leave Act National Defense Authorization Act for FY 2010 Amendments

(February 2010)

On October 28, 2009, the President signed into law the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), Public Law 111-117. The NDAA amends the Family and Medical Leave Act (FMLA). These amendments expand the military family leave provisions added to the FMLA and military caregiver leave for employees with family members who are covered military members.

The 2010 NDAA amendments to the FMLA provide that an eligible employee may take FMLA leave for any qualifying exigency arising out of the fact that the employee's son, daughter, or parent is on (or has been notified of an impending call to) "covered active duty" in the Armed Forces. "Covered active component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. "Covered active components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member while under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code. (Prior qualifying exigency leave did not apply to employees with family members serving in a regular component of the Armed Forces and then the National Guard and Reserves be deployed with the Armed Forces to a foreign country.)

The 2010 NDAA also expands the military caregiver leave provisions of the FMLA. Military caregiver leave entitles an eligible employee or next of kin of a "covered servicemember" to take up to 26 workweeks of FMLA leave in a single 12-month period to care for a "covered member with a serious injury or illness". Under the 2010 NDAA amendments, the definition of "covered servicemember" is expanded to include a **veteran** "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of the member's active duty in the Armed Forces, including regular components and National Guard and Reserves."

In addition, the 2010 NDAA amends the FMLA's definition of a "serious injury or illness". For a current member of the Armed Forces the definition is amended to include not only a serious injury or illness that was incurred by the member in line of duty on active duty but also a serious injury or illness that "existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces" that may render the member unable to perform the member's office, grade, rank, or rating. For a veteran, a serious injury or illness is defined as "a qualifying injury or illness that was incurred while on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran." The 2010 NDAA directs the Secretary of Labor to define "qualifying injury or illness."

Read more about the FMLA at [www.dol.gov/whd/fmla](http://www.dol.gov/whd/fmla).

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## Wage and Hour Division (WHD)

(Revised February 2010) (PDF)

### Fact Sheet #28: The Family and Medical Leave Act of 1993

See The CFR

**Notice:** On October 28, 2009, the President signed the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), [Public Law 111-84](#). Section 565 of the 2010 NDAA amends the military family leave entitlements of the Family and Medical Leave Act (FMLA). These amendments expand coverage for "qualifying exigency" leave to eligible employees with covered family members in the Regular Armed Forces and coverage for "military caregiver leave" to eligible employees who are the spouse, son, daughter, parent, or next of kin of certain veterans with a "serious injury or illness". On December 21, 2009, the President signed the Airline Flight Crew Technical Corrections Act, [Public Law 111-119](#), which modifies the FMLA eligibility requirements for flight crew members. This Fact Sheet does not incorporate these amendments to the FMLA.

The U.S. Department of Labor's Employment Standards Administration, Wage and Hour Division, administers and enforces the Family and Medical Leave Act (FMLA) for all private, state and local government employees, and some federal employees. Most federal and certain congressional employees are also covered by the law and are subject to the jurisdiction of the U.S. Office of Personnel Management or the Congress.

The FMLA entitles eligible employees to take up to 12 workweeks of unpaid, job-protected leave in a 12-month period for specified family and medical reasons, or for any "qualifying exigency" arising out of the fact that a covered military member is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. The FMLA also allows eligible employees to take up to 26 workweeks of job-protected leave in a "single 12-month period" to care for a covered servicemember with a serious injury or illness. See [Fact Sheet #28A: The Family and Medical Leave Act Military Family Leave Entitlements](#).

#### EMPLOYER COVERAGE

The FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

#### EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the employer within 75 miles.

While the 12 months of employment need not be consecutive, employment periods prior to a break in service of **seven** years or more need not be counted unless the break is occasioned by the employee's fulfillment of his or her National Guard or Reserve military obligation (as protected under the Uniformed Services Employment and Reemployment Rights Act (USERRA)), or a written agreement, including a collective bargaining agreement, exists concerning the employer's intention to rehire the employee after the break in service. See "[FMLA Special Rules for Returning Reservists](#)."

#### LEAVE ENTITLEMENT

A covered employer must grant an eligible employee up to a total of **12 workweeks of unpaid leave** during any 12-month period for one or more of the following reasons:

- for the birth and care of a newborn child of the employee;
- for placement with the employee of a son or daughter for adoption or foster care;
- to care for a spouse, son, daughter, or parent with a serious health condition;
- to take medical leave when the employee is unable to work because of a serious health condition; or
- for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty or call to active duty status as a member of the National Guard or Reserves in support of a contingency operation.

A covered employer also must grant an eligible employee who is a spouse, son, daughter, parent, or next of

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kin of a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness up to a total of **26 workweeks of unpaid** leave during a "single 12-month period" to care for the servicemember. For specific information regarding military family leave, see "Fact Sheet #28A: The Family and Medical Leave Act Military Family Leave Entitlements."

Spouses employed by the same employer are limited in the **amount of** family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 workweeks (or 26 workweeks if leave to care for a covered servicemember with a serious injury or illness is also used). Leave for birth and care, or placement for adoption or foster care, must conclude within 12 months of the birth or placement.

Under some circumstances, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation. If FMLA leave is for birth and care, or placement for adoption or foster care, use of intermittent leave is subject to the employer's approval.

Under certain conditions, employees or employers may choose to "substitute" (run concurrently) accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

"**Serious health condition**" means an illness, injury, impairment, or physical or mental condition that involves either:

- Inpatient care (*i.e.*, an overnight stay) in a hospital, hospice, or residential medical-care facility, including any period of incapacity (*i.e.*, inability to work, attend school, or perform other regular daily activities) or subsequent treatment in connection with such inpatient care; **or**
- Continuing treatment by a health care provider, which includes:
  - (1) A period of incapacity lasting more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that **also** includes:
    - treatment two or more times by or under the supervision of a health care provider (*i.e.*, in-person visits, the first within 7 days and both within 30 days of the first day of incapacity); **or**
    - one treatment by a health care provider (*i.e.*, an in-person visit within 7 days of the first day of incapacity) with a continuing regimen of treatment (*e.g.*, prescription medication, physical therapy); **or**
  - (2) Any period of incapacity related to pregnancy or for prenatal care. A visit to the health care provider is not necessary for each absence; **or**
  - (3) Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity. A visit to a health care provider is not necessary for each absence; **or**
  - (4) A period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; **or**
  - (5) Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three days if not treated.

#### **MAINTENANCE OF HEALTH BENEFITS**

A covered employer is required to maintain group health insurance coverage for an employee on FMLA leave whenever such insurance was provided before the leave was taken and on the same terms as if the employee had continued to work. If applicable, arrangements will need to be made for employees to pay their share of health insurance premiums while on leave. In some instances, the employer may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave.

#### **JOB RESTORATION**

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee's use of FMLA leave cannot result in the loss of any employment benefit that the employee earned or was entitled to **before** using FMLA leave, nor be counted against the employee under a "no fault" attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave,

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payment may be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

## **NOTICE AND CERTIFICATION**

### Employee Notice

Employees seeking to use FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than 30 days in advance, the employee must provide notice as soon as practicable – generally, either the same or next business day. When the need for leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, employees must comply with the employer's usual and customary notice and procedural requirements for requesting leave.

Employees must provide sufficient information for an employer reasonably to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, and/or that the employee or employee's qualifying family member is under the continuing care of a health care provider.

When an employee seeks leave for a FMLA-qualifying reason for the **first** time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

### Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under the FMLA. An employer that willfully violates this posting requirement may be subject to a civil money penalty of up to \$110 for each separate offense. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring. Employers may use the notice prepared by U.S. Department of Labor to meet this requirement.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under the FMLA. When the employer has enough information to determine that leave is being taken for a FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave. Employers may use the optional forms WH-381 and WH-382 prepared by the U.S. Department of Labor to meet these notification requirements.

### Certification

Employers may require that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health care provider. An employer may require second or third medical opinions (at the employer's expense) and periodic recertification of a serious health condition. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious health condition. An employer may have a uniformly-applied policy requiring employees returning from leave for their own serious health condition to submit a certification that they are able to resume work. If reasonable safety concerns exist, an employer may, under certain circumstances, require such a certification for employees returning from intermittent FMLA leave. Employers may use the optional forms WH-380-E and WH-380-F prepared by the U.S. Department of Labor for obtaining medical certifications of serious health conditions.

## **UNLAWFUL ACTS**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to the FMLA.

## **ENFORCEMENT**

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

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**OTHER PROVISIONS**

Special rules apply to employees of local education agencies. Generally, these rules apply to intermittent leave or when leave is required near the end of a school term.

Salaried executive, administrative, and professional employees of covered employers who meet the Fair Labor Standards Act (FLSA) criteria for exemption from minimum wage and overtime under Regulations, 29 CFR Part 541, do not lose their FLSA-exempt status by using any unpaid FMLA leave. This special exception to the "salary basis" requirements for FLSA's exemption extends only to an "eligible" employee's use of leave required by the FMLA.

**For additional information, visit our Wage and Hour Division Website:**

**<http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone,**

**1-866-4-USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

# NFIB

The Voice of Small Business®

ALASKA

February 17, 2010

The Honorable Pete Peterson  
State Capitol Building  
Juneau, Alaska 99801-1182

RE: House Bill 347

Dear Representative Peterson:

On behalf of the National Federation of Independent Business/Alaska, I wish to express our opposition to House Bill 374. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

House Bill 374 mandates a new employee benefit on employers without consideration for the economic or logistic costs to the employer. It interjects the state into an area of employee benefits that should be left to the employment arrangements between employers and employees. By mandating this policy on employers, you limit the ability of an employer to structure the benefit package to fit the unique needs of its employees.

While we appreciate the concern for spouses of those serving as a member of the armed forces of the United States, legislation allowing an employee to take leave without notice to the employer presents a special difficulty to Alaskan employers. Such requirements cause others to work extra time with no prior notice. Depending on the position of the individual, it could disrupt the entire business operation.

Along with our general opposition to unfunded government mandates on employers, we would strongly suggest that this is not the time to add cost and disruption to businesses in Alaska. This is a time to assure that employers are able to stay in business and employ Alaskans.

Sincerely yours,



Dennis L. DeWitt  
Alaska State Director

Cc: NFIB/AK Leadership Council  
House Education Committee

# ALASKA VETERANS POLITICAL ACTION COMMITTEE

## Alaska Veterans 2010 Priorities (2/12/10 update)

Outlined below are the state legislative priorities as we see them for the 2010 session. If you have other issues or think there should be different priorities, or in anyway disagree with what is outlined below, please notify: [ricdavidge.ak@qci.net](mailto:ricdavidge.ak@qci.net)

### **1. Outreach Fully implement HB44 which created the first volunteer veterans register on the PFD application.**

This requires the Dept of Mil & Vet Affairs to craft a contract/agreement between the state and "Congressionally Chartered Veteran Service Organizations" as required by the act. The components of these agreements are critical. We DO NOT want service organizations using this list to "recruit". That was a part of the agreement we made with legislators that got this bill passed. Only Congressional Chartered Veteran Service Organizations can participate. That's VVA, VFW, Am Leg, Am Vets, MOPH.

We suggest that the AK Dept of Mil & Vet Affairs enter into an agreement with all Veteran Service Organizations to cooperate in the effort to reach our veterans with information about their rights, benefits, services, etc.

We also suggest that the AK Dept of Mil & Vet Affairs enter into a MOA/MOU with the US Dept of Veterans Affairs, Alaska to cooperatively do at least one general mailing a year to every veteran on this list. This mailing should advise each veteran of the rights, benefits, and services they MAY qualify for and how to access them through the services of a nationally accredited Veteran Service Officer. Status: House/Senate Joint Cmte on Mil & Vet Affairs needs to hold a hearing and request status, what are the problems, etc. This "law" should be fully implemented - it is the law. Wasup?

### **2. Immediate inclusion of all nationally accredited Veteran Service Officers (VSO) in state funding for veterans services under the Dept of Mil & Vet Affairs.**

**It is time the state recognized the work that all accredited veterans organization Service Officers are doing for our military, our veterans, and for their families.**

For years a small number of Veteran Service Organizations have received exclusive financial support from the state in the state's Dept of Mil and Vet Affairs. **This is wrong.** All nationally accredited Veteran Service Officers should be included in this program under the Director of Veteran Services within the AK Dept of Mil & Vet Affairs. Additionally, the programs of these VSO's and their supportive organizations **must** be reviewed regularly to ensure the state's funds are being responsibly used to benefit Alaska's veterans and the state's interests. The new DMVA Director of Veterans Affairs is trying to provide appropriate oversight and accountability for the use of these state funds. He needs strong legislative and administrative support for his efforts. We strongly support his efforts.

We recommend a serious overhaul of this program, long supported by the state. It is our intention to bring this before our state legislators this 2010 session and every session until this program is made more inclusive and far more productive and responsive to the interests of our veterans and the state. We will also push for more funding in the program as we can clearly demonstrate such an investment is in the economic best interest of the state as well as thousands of Alaskan veterans and their families. Status: we have requested a formal update from the Commission of Military and Veterans Affairs. We have notified the House/Senate Finance Cmtes that VVA VSO's need to be included in the program. VVA requested this action over three years ago following the election of Gov Palin.

### **3. Immediate passage of HJR 16 now in House Rules Cmte calls for Congressional oversight hearings into why federal agencies in Alaska refuse or fail to meet their mandated 3% set a side for Service Disabled Veteran Owned Small Businesses (SDVOSB) in Alaska. This resolution is in direct support of the efforts of our Congressional Delegation to get federal agencies in Alaska to meet these and other federal contracting/procurement/and hiring requirements. Passage of this resolution will bolster efforts by a number of states to get Congress to give this long standing infraction of federal law and policy to the detriment of disabled veterans who start business that qualify for federal procurement preferences.**

Update: Sponsor/Gatto sent request to House Rules to schedule for House floor action

**4. Immediate passage of HB225** (alternative to HB24) which passed the state House w/out a dissenting vote last session. This bill **authorizes a 5% preference on all state procurements/contracts for Alaskan Veteran Owned Businesses**. Senate action should remove the arbitrary cap on the size of projects/procurements for which this preference can apply. Status: In House Finance since 4/14/09 We have requested Sponsor ask for Cmte Hearing

**5. Immediate passage of SB151** which makes it a **class A misdemeanor** for any "charity" to **solicit donations if they are not in full compliance with state and federal laws and regulations**. It also requires that all donations be used for the purpose they are solicited for. This is in direct response to the national and Alaskan problem of bogus charities, especially veteran "charities" that are not in compliance with the law or use their donations for "other purposes". The definition of "soliciting" needs to be expanded to not just be limited to phone solicitations but all and any solicitation by any organization or group for veterans or other groups.

We also believe it timely to begin a serious discussion on what is an appropriate split between those who actually do the solicitation and the organizations that receive the benefits of these efforts. We suggest a split of 60% for the organization and 40% for compensation of solicitors.

Finally, we believe it essential that our State Attorney General open formal investigations and/or audits into charities who are not in full state/federal compliance and about whom the Attorney General receives formal complaints. This is beginning to happen in more and more states as policy makers become aware of the amount of "fraud" and misrepresentation that is taking place by some so called charities. Status: In Sen Finance since 3/18/09 Time to move it to Sen Rules with amendments as outlined above.

**6. We need more "partnerships" in rural and remote Alaska to provide healthcare services to our veterans** and their families across Alaska. (A report on Rural and Remote Healthcare Needs of our Veterans, developed for the National Conference of State Council Presidents is available upon request). Status: The AK VA is making real progress here, but we would like to see more.

**7. Ending Homelessness for AK Veterans** The Alaska Veterans Foundation, Inc. and a growing number of national veteran's organizations lead by the Vietnam Veterans of America are joining together with community service organizations and private corporations to end homelessness for Alaska's veterans in the next 5 years. This must be an active and visible partnership between the state, local governments, and these mentioned groups.

Status:

- The Alaska Veterans Foundation, Inc. has put forward a request for funds to do the pre-development work essential to start Alaska's first Housing First concept **for veterans** using a harm reduction model with priority for the chronic homeless veterans in Anchorage. We will update you on this proposal to Congress requested by Members of our delegation. If you want a copy of the proposal please email: [rdavidge@cylaska.com](mailto:rdavidge@cylaska.com)
- Legislatively, one critical key in moving in the right direction is by actually funding the **Alaska Housing Trust** as agreed years ago. Contact **Chairman Mike Hawker of the House Appropriations Committee** [Rep Mike Hawker@legis.state.ak.us](mailto:Rep Mike Hawker@legis.state.ak.us)

The demographics of homelessness for our veterans are changing, but the groups who serve the homeless are not moving quickly enough to meet these new challenges.

1. The number of women new veterans' w/children who are homeless is increasing dramatically.
2. The number of veterans with families is increasing and now is about 1/3 of the total in AK.
3. We need new housing products that include Housing First models. They work and save communities tens of thousands of dollars in local taxes annually.
4. The State of Alaska has been actively studying this horrific cultural issue, but yet the number of new "doors" has not dramatically increased. We need a new approach.
5. We have serious cultural issues/conflicts that **MUST** be addressed when dealing with this issue.
6. 90+% of all public funds directed towards the homeless are for "services". **This will not solve this problem**. We need "Housing First" models in every major community across our state.

We have the means, method, plan, and proven solutions capable of accomplishing this in 5 years.

**8. HB284/SB215 Requires the AK Department of Health and Social Services to accept federal prescription drug benefits or provide comparable benefits for residents of AK Pioneers' Home, including residents eligible for discount or free benefits from the US Dept of VA or the Indian Health Svc . . .** Introduced by Rep Dahlstrom, Gara, Herron, Wilson in the House and Senators Wielechowski, in the Senate these bills are an attempt for formally codify the agreement worked out last year by Members of the Legislature, Veterans Organizations, the VA, the Commissioner HSS/and the Pioneers Homes/AK Vet Home on handling medications for veterans in resident. Although the current agreement appears to be working well, it is our belief, and one shared by these sponsors, that this agreement needs to be formally codified into law. Update: SB215 [http://www.legis.state.ak.us/basis/get\\_bill.asp?bill=SB%20215&session=26](http://www.legis.state.ak.us/basis/get_bill.asp?bill=SB%20215&session=26) Out of Sen HSS w/Do Pass 0 fiscal note, now referred to Sen Finance.

**9. SB278/NEW BILL – Allowing teachers, public employees, and private sector employees to take leave without pay when their spouses are on leave from deployment in a combat zone.** Introduced by Senator Wielechowski, this bill is in direct response to problems military spouses have had trying to take time off from work to visit their spouse while on leave/R&R from combat locations. The bill has also been expanded to include leave without pay when a spouse wishes to spend time with a wounded warrior, again in response to problems some have had.

We were asked to review this bill during its formation and strongly support Sen. Wielechowski's efforts. Although one would think the Federal Family Leave Act would cover spouses visiting their wounded warriors, there appears to be a need for state law making this clear. The bill limits the time to 10 working days. Status: Just introduced this week

#### **Other Issues:**

- Need coordinated effort by State DMVA and Veteran Service Organizations to get Native Corps to hire and support their own NVSOs. VVA has offered to help train and support these VSOs and coordinate with our regional and village corporations to accomplish this.
- We need younger VSOs. AVVA is now approved by the VA, so we will begin finding, training and supporting younger VSOs to work with our new veterans.
- Fix the PFD process to be more workable with overseas deployments for Active Duty, Reserves, and National Guard. Amend the 72 hr every two years, fix the 180 day requirement, and fix the 5 year presumption.
- Alaska State veteran personnel/hire laws and regulations need to be updated and extended similar to federal preferences.
- Veteran Courts – need more development, focus on intake points that ensure we ask: "are you a veteran?"
- New Vet Transition Teams – needs more local community interface. Suggest a booklet by the State DMVA on state and local services and benefits. Should allow VSO's into system.

We hope this is helpful to our collective efforts to improve the lives of Alaska's veterans and their families.

**Prepared by Ric Davidge** 907 229 5328 [ricdavidge.ak@gci.net](mailto:ricdavidge.ak@gci.net) [rdavidge@cvalaska.com](mailto:rdavidge@cvalaska.com)

- State Council President, Vietnam Veterans of America (VVA)
- Chairman, Alaska Veterans Foundation, Inc. (AKVF)
- Chairman, MOA Mil & Vet Affairs Commission
- Chairman, Alaska Veterans Political Action Committee (AK VET PAC)
- Chairman, Ending Chronic Homelessness for our veterans (National Conf of State Council Presidents, VVA)
- Chairman, Political Action Committee (National Conf of State Council Presidents, VVA)
- National Chairman, Economic Opportunities Committee, VVA

## Fact Sheet #28A: The Family and Medical Leave Act Military Family Leave Entitlements

The National Defense Authorization Act for FY 2008 (NDAA), Public Law 110-181, amended the FMLA to allow eligible employees to take up to 12 weeks of job-protected leave in the applicable 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter, or parent. The NDAA also amended the FMLA to allow eligible employees to take up to 26 weeks of job-protected leave in a “single 12-month period” to care for a covered servicemember with a serious injury or illness. These two new types of FMLA leave are known as the military family leave entitlements.

### EMPLOYER COVERAGE

FMLA applies to all public agencies, including state, local and federal employers, local education agencies (schools), **and** private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.

### EMPLOYEE ELIGIBILITY

To be eligible for FMLA benefits, an employee **must**:

- work for a covered employer;
- have worked for the employer for a total of 12 months;
- have worked at least 1,250 hours over the previous 12 months; and
- work at a location where at least 50 employees are employed by the employer within 75 miles.

### MILITARY FAMILY LEAVE ENTITLEMENTS

**Military Caregiver Leave:** A covered employer must grant an eligible employee who is a spouse, son, daughter, parent, or next of kin of a covered servicemember with a serious injury or illness up to a total of **26 workweeks of unpaid** leave during a “single 12-month period” to care for the servicemember. A covered servicemember is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. A serious injury or illness is one that was incurred by a servicemember in the line of duty on active duty that may render the servicemember medically unfit to perform the duties of his or her office, grade, rank, or rating. The “single 12-month period” for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the employer for other types of FMLA leave. An eligible employee is limited to a **combined** total of 26 workweeks of leave for any FMLA-qualifying reason during the “single 12-month period.” (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember.)

**Qualifying Exigency Leave:** A covered employer must grant an eligible employee up to a total of **12 workweeks of unpaid** leave during the normal 12-month period established by the employer for FMLA leave

for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Under the terms of the statute, qualifying exigency leave is available to a family member of a military member in the National Guard or Reserves; it does not extend to family members of military members in the Regular Armed Forces.

Qualifying exigencies include:

- Issues arising from a covered military member's short notice deployment (i.e., deployment on seven or less days of notice) for a period of **seven** days from the date of notification;
- Military events and related activities, such as official ceremonies, programs, or events sponsored by the military or family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or the American Red Cross that are related to the active duty or call to active duty status of a covered military member;
- Certain childcare and related activities arising from the active duty or call to active duty status of a covered military member, such as arranging for alternative childcare, providing childcare on a non-routine, urgent, immediate need basis, enrolling or transferring a child in a new school or day care facility, and attending certain meetings at a school or a day care facility if they are necessary due to circumstances arising from the active duty or call to active duty of the covered military member;
- Making or updating financial and legal arrangements to address a covered military member's absence;
- Attending counseling provided by someone other than a health care provider for oneself, the covered military member, or the child of the covered military member, the need for which arises from the active duty or call to active duty status of the covered military member;
- Taking up to **five** days of leave to spend time with a covered military member who is on short-term temporary, rest and recuperation leave during deployment;
- Attending to certain post-deployment activities, including attending arrival ceremonies, reintegration briefings and events, and other official ceremonies or programs sponsored by the military for a period of 90 days following the termination of the covered military member's active duty status, and addressing issues arising from the death of a covered military member;
- Any other event that the employee and employer agree is a qualifying exigency.

Spouses employed by the same employer are limited to a **combined** total of 26 workweeks in a "single 12-month period" if the leave is to care for a covered servicemember with a serious injury or illness, and for the birth and care of a newborn child, for placement of a child for adoption or foster care, or to care for a parent who has a serious health condition.

FMLA leave may be taken intermittently whenever **medically necessary** to care for a covered servicemember with a serious injury or illness. FMLA leave also may be taken intermittently for a qualifying exigency arising out of the active duty status or call to active duty of a covered military member. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

Under certain conditions, employees or employers may choose to "substitute" (run concurrently) accrued **paid** leave (such as sick or vacation leave) to cover some or all of the FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the employer's normal leave policy.

## NOTICE REQUIREMENTS

### Employee Notice

Employees seeking to use military caregiver leave must provide 30 days advance notice of the need to take FMLA leave for planned medical treatment for a serious injury or illness of a covered servicemember. If leave is foreseeable but 30 days advance notice is not practicable, the employee must provide notice as soon as practicable – generally, either the same or next business day. An employee must provide notice of the need for foreseeable leave due to a qualifying exigency as soon as practicable. When the need for military family leave is not foreseeable, the employee must provide notice to the employer as soon as practicable under the facts and circumstances of the particular case. Generally, it should be practicable to provide notice for unforeseeable leave within the time prescribed by the employer's usual and customary notice requirements.

An employee does not need to specifically assert his or her rights under FMLA, or even mention FMLA, when providing notice. The employee must provide "sufficient information" to make the employer aware of the need for FMLA leave and the anticipated timing and duration of the leave. Depending on the situation, such information may include, as applicable:

- that the requested leave is for a particular qualifying exigency related to the active duty or call to active duty status of a covered military member and the anticipated duration of the leave;
- that the leave is for a qualifying family member who is a covered servicemember with a serious injury or illness and the anticipated duration of the leave.

When an employee seeks leave due to a FMLA-qualifying reason for which the employer has previously provided the employee FMLA-protected leave, the employee **must** specifically reference either the qualifying reason for leave or the need for FMLA leave.

### Employer Notice

Covered employers must post a notice approved by the Secretary of Labor explaining rights and responsibilities under FMLA. Additionally, employers must either include this general notice in employee handbooks or other written guidance to employees concerning benefits, or must distribute a copy of the notice to each new employee upon hiring.

When an employee requests FMLA leave or the employer acquires knowledge that leave may be for a FMLA purpose, the employer must notify the employee of his or her eligibility to take leave, including a reason for non-eligibility if the employee is determined not to be eligible. Such eligibility notice may be oral or written and should, generally, be given within five business days of the request for FMLA leave. Subsequent eligibility notice in the same 12-month leave period may be required when an employee's eligibility status changes. Employers also must inform employees of their rights and responsibilities under FMLA, including giving specific written information on what is required of the employee.

When the employer has enough information to determine that leave is being taken for an FMLA-qualifying reason, the employer must notify the employee that the leave is designated and will be counted as FMLA leave. The employer must designate leave that qualifies as **both** leave to care for a covered servicemember with a serious injury or illness **and** leave to care for a qualifying family member with a serious health condition as leave to care for a covered servicemember in the first instance. The designation notice must be in writing and, generally, must be given within five business days of the determination. An employer also must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA entitlement.

## CERTIFICATION REQUIREMENTS

Employers may require that an employee's request for military family leave be supported by an appropriate certification. An employer may require that:

- leave for a qualifying exigency be supported by a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party;
- leave to care for a covered servicemember with a serious injury or illness be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered servicemember's family.

Second and third opinions and recertification are not permitted for certification of a covered servicemember's serious injury or illness or of a qualifying exigency. An employer may use a health care provider, a human resource professional, a leave administrator, or a management official – but not the employee's direct supervisor – to authenticate or clarify a medical certification of a serious injury or illness, or an ITO or ITA. Additionally, an employer may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.

### **UNLAWFUL ACTS**

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice, or because of involvement in any proceeding, related to FMLA.

### **ENFORCEMENT**

The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. Individuals may also be able to bring a private civil action against an employer for violations.

**For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).**

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

**U.S. Department of Labor**  
Frances Perkins Building  
200 Constitution Avenue, NW  
Washington, DC 20210

**1-866-4-USWAGE**  
TTY: 1-866-487-9243  
**Contact Us**


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Positive Solutions for the Workplace

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**Growing Number of States Passing Family Military Leave Acts**

July 30, 2007

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.

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## America's Newspapers

**Senate looks at time off for spouse during leave****Olympian, The (WA)** - Tuesday, February 19, 2008**Author:** *Michael Gilbert, The News tribune*

There are few things as sacred for service members and their loved ones enduring a combat deployment as midtour leave.

Troops in Iraq and Afghanistan get up to 18 days of time out of the war zone. Most use the time to relax at home with their families.

The timing sometimes is unpredictable. Leaves are known to be postponed at the last minute because of the operational needs of the service member's unit. Flights out get diverted. But when the leave finally comes through, the last thing the spouse at home needs is trouble with the boss about getting time away from work.

That's the point of Senate Bill 6447, a measure being considered in Olympia that would require employers to give up to 15 days of unpaid leave to employees whose military spouses are home on leave from the war zone.

It's one of a couple dozen military and veterans-related bills still alive in the Legislature as lawmakers move toward today's cutoff deadline. Measures must pass out of the chamber in which they originated or they're considered dead for the session.

"It seems like a law that shouldn't even be necessary, but if it helps assure that people get their time off, that's one less thing to worry about," said Caedmon Cahill, a Seattle public defender whose husband, Leo, is a company commander with the 173rd Airborne Brigade in Afghanistan. "He's due home on leave in March."

Cahill heard from her mother-in-law about how other states had passed a similar law, and talking with a friend, learned about how she had to fight to get a mere two days off when her husband came home from Iraq.

"I realized Washington didn't have this law, and I was starting a new job at the time," Cahill said. "I thought this would make it easier for people to feel comfortable and safe in asking for the time off."

Cahill, a year out of law school, enlisted a friend who is a lobbyist, and the two drafted the bill - the Family Military Leave Act - at her kitchen table over a weekend. It cleared the Senate Government Operations & Elections Committee in late January and was waiting for a vote on the Senate floor.

The bill's sponsor, Sen. Steve Hobbs, a Lake Stevens Democrat and Army Iraq veteran, said he expects the measure will clear the Senate. No one spoke in opposition to the bill in committee.

"Our service members families gave pretty compelling testimony, and on top of that we have the 81st Brigade Combat Team getting ready to deploy," Hobbs said, referring to the Washington National Guard brigade that is expected to return to Iraq late this summer.

"This is really going to address their needs," he said.

**Other bills**

Other bills still alive include a number of technical fixes to correct the unforeseen complications that arise when state or local government employees are called up to full-time service in the National Guard or reserves. For instance, one would ensure that employees get credit toward their retirement, while another would see that they get paid on time, and another would extend military leaves of absence for government employees from 15 to 30 days.

There are also House and Senate bills to create a new state license plate for parents whose service-member children are killed in military service.

There are House and Senate versions of bills to protect the child-custody rights of service members when they're deployed overseas. The House passed a bill to allow service members who left high school before graduating in order to serve in Vietnam to receive their diplomas.

"They're definitely paying attention to veterans issues," said Heidi Audette, spokeswoman for the state Department of Veterans Affairs. "There are a lot of issues that are still moving, probably more than in past sessions."

More bills are still alive past the cutoff.

**Section:** News

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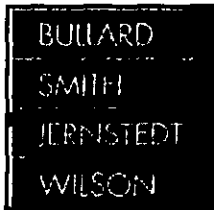
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## Oregon Military Leave Act now in effect

August 9, 2009



Bullard Smith Jernstedt Wilson

BULLARD eAlert

1. **Oregon Military Leave Act**
2. **Oregon Workplace Religious Freedom Act:**
3. **Annual Labor and Employment Law Briefing-- 11/14/09:**

On June 25, 2009, the Oregon Military Family Leave Act went into effect, requiring all public, private, and not-for-profit employers of 25 or more employees in Oregon to provide up to 14 days of unpaid leave to "eligible" employees who are spouses of members of the armed forces during periods of military conflict. Click the following link to read the Bullard Alert describing the OMFLA in more detail: <http://www.bullardlaw.com/Resources/BullardAlerts.html>.

### **Oregon Workplace Religious Freedom Act:**

Last week Governor Kulongoski signed the Oregon Workplace Religious Freedom Act, which goes into effect January 1, 2010. Among other things, absent "undue hardship" the Act prohibits an employer from "impos[ing] an occupational requirement that restricts the ability of an employee to wear religious clothing, to take time off for a holy day or to take time off to participate in a religious observance or practice." Further, the Act also requires that an employer permit an employee to use accrued "vacation leave, or other leave available to the employee, for the purpose of allowing the employee to engage in the religious observance or practices of the employee". While the Act applies to most workplaces, makes an exception for school districts, education service districts and public charter schools, which may prohibit teachers from wearing religious dress while engaged in the performance of duties as a teacher.

### **Annual Labor and Employment Law Briefing-- October 14, 2009:**

On October 14 we will be presenting our Annual Labor and Employment Law Briefing at the Oregon Convention Center. This continues our tradition of providing you with an annual update on current labor and employment law issues facing owners, executives, managers, in house counsel and human resources professionals, including review of recent case decisions, monitoring employee use of the internet and email, and employee wellness. Our guest speaker this year will be Brad Barton, a 1992 US Olympic Trials qualifier, master magician, and successful business person. MCLE and PHR credit is pending.

**Registration:** You may obtain more information about and register to attend the Annual Briefing by clicking on <http://www.bullardlaw.com/Resources/SeminarsWorkshops.html> or by contacting Coni Crone (503.248.1134 or [ccrone@bullardlaw.com](mailto:ccrone@bullardlaw.com)). We look forward to seeing you there.

#### At Your Service:

Please feel free to contact us with questions or for more information about the Oregon Military Family Leave Act, the Oregon Workplace Religious Freedom Act, or other developments affecting employment, labor relations and employee benefits. You may reach us anytime at 503/248-1134 or on the web at [www.bullardlaw.com](http://www.bullardlaw.com). Thank you.

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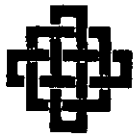
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**New York Enacts the Military Spouse Leave Act**

New York has become the first state to require employers<sup>1</sup> to grant unpaid leave to employees<sup>2</sup> that are spouses of service members, including members of the United States armed forces, national guard or reserves who have been deployed during a period of military conflict<sup>3</sup> to a combat zone. Section 202-i of the Labor Law (the "Act") mandates that employers must grant the spouse ten (10) days unpaid leave when the spouse serving in the military is on leave. An employer may not retaliate against an employee for requesting a leave of absence under the Act.

***Where the Act can be found:*** NY Labor § 202-i.

***When the Act became effective:*** The amendment is effective retroactive to August 16, 2006, the date Labor Law § 202-i was originally enacted.

***Practice Guidelines:*** Employers must grant an employee's request for unpaid leave of absence if he or she: (i) works an average of twenty or more hours per week, regardless of length of employment; and (ii) has a spouse serving in the military who is on leave. An employer may not refuse a leave of absence due to potential adverse effects resulting from the leave. Employees are not required to give advance notice of their intention to take leave under the Act. An employee's vacation days will be unaffected by the decision to take unpaid leave.

The Act only applies to spouses, rather than family members or significant others of military personnel. However, employers offering domestic partner benefits to their employees should consider whether to allow domestic partners of service members to also receive unpaid leave under the Act. Additionally, employers should consider including information regarding the Act in their personnel handbook and/or policy manuals.

***This alert is meant to provide general information only, not legal advice. Please contact Angela Cheng at Lawyers Alliance for New York at (212) 219-1800 x 278 or visit our website [www.lawyersalliance.org](http://www.lawyersalliance.org) for further information.***

<sup>1</sup> Employer means a person or entity that employs twenty or more employees in at least one location and includes an individual, corporation, the state, county, town, city, school district, public authority or other governmental subdivision of any kind.

<sup>2</sup> Employee means a person who performs service for hire for an employer for an average of twenty or more hours per week but does not include an independent contractor.

<sup>3</sup> Period of Military Conflict means a period of war declared by the United States Congress or in which a member of a reserve component of the armed forces is ordered to active duty.

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# Employment Law Alert

## Legal developments affecting human resource management

A publication of Nixon Peabody LLP

JULY 31, 2008

### Rhode Island Military Family Relief Act Imposes New Leave Requirements on Large and Small Employers

*By Neal J. McNamara and Jillian S. Folger-Hartwell*

On June 23, 2008, Governor Carcieri signed into law the Rhode Island Military Family Relief Act, H.B. 7774, 2008 Leg. Sess. (R.I. 2008), S.B. 2760, 2008 Leg. Sess. (R.I. 2008) (to be codified at R.I. Gen. Laws §§ 30-33-1 *et seq.*) ("Act"), which took effect immediately. This new leave law has important implications for Rhode Island employers, both small and large.

Under the Act, spouses or parents of individuals who are called to military service lasting longer than thirty (30) days may request family military leave. Businesses that employ between fifteen (15) and fifty (50) employees must provide up to fifteen (15) total days of leave to such an employee during the time the federal or state military orders are in effect. Employers who have more than fifty (50) employees must provide up to thirty (30) total days of family military leave.

This leave may be unpaid and may only be taken if the employee has exhausted all accrued vacation leave, personal leave, compensatory leave, or any other leave that may be granted to the employee, with the exception of sick or disability leave. In addition, if the leave will consist of five (5) consecutive workdays or more, at least fourteen (14) days' notice must be given to an employer. If the leave consists of less than five (5) consecutive days, the employee need only give as much advance notice as is "practicable." Employers may, however, require certification from the proper military authority to verify the employee's eligibility to take the requested family military leave.

During any family military leave, the employee must be permitted to continue their benefits at their own expense. The employer and employee, however, may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave. Upon return from leave, employees must be reinstated to the same position or a position with "equivalent seniority status, employee benefits, pay and other terms and conditions of employment."

The Act imposes several new requirements on employers. First, although businesses that employ fewer than fifty (50) employees are not required to provide leave under the Family and Medical Leave Act of 1993, 29 U.S.C. §§ 2601 *et seq.* (2008), or the Rhode Island Parental and Family Medical Leave Act ("RIPFMLA"), R.I. Gen. Laws §§ 28-48-1 *et seq.* (2008), businesses with as few as fifteen (15) employees are subject to the new Act's provisions. In addition, unlike the leave provisions of the FMLA and the RIPFMLA, an employee need not provide any reason for leave under the Act, but

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need only show that his or her spouse or child has been called to military service lasting longer than thirty (30) days. Moreover, unlike leave provided under the FMLA and/or RIPFMLA, an employee's eligibility for leave is not measured based on the number of days the employee has taken in a calendar year; rather, the employee is entitled to this leave "during the time the federal or state orders are in effect." Thus, an employee may be eligible for family military leave under the Act, even if he or she has exhausted his or her allotted FMLA or RIPFMLA leave time.

Like the FMLA and the RIPFMLA, the Act provides that an employee must be reinstated to the same or a similar position upon his or her return from leave. Thus, employers may need to fill some positions temporarily for up to thirty (30) days. In addition, the Act appears to contemplate, and certainly does not prohibit, that this leave may be taken intermittently. Thus, an employer could be faced with numerous absences of varying lengths during the time the employee's family member has active orders. Moreover, the Act's provision that benefits may be continued at the employee's expense has little practical value for an employer because the amount of leave time permitted under the Act amounts to no more than a total of thirty (30) days. It would likely be administratively cumbersome for an employer to attempt to have an employee pay for his or her benefits during such short periods of leave time.

Ultimately, employers who previously believed they were not required to comply with federal and state family leave laws because they have fewer than fifty (50) employees, may need to update or develop leave policies based on the Act's provisions. In addition, larger employers will need to review and update their leave policies to ensure their existing policies comply with the Act.

For more information on this or any other labor or employment law matter, please contact your regular Nixon Peabody attorney or:

- Neal J. McNamara at 401-454-1019 or [nmcnamara@nixonpeabody.com](mailto:nmcnamara@nixonpeabody.com)
- Jillian S. Folger-Hartwell at 401-454-1046 or [jfolgerhartwell@nixonpeabody.com](mailto:jfolgerhartwell@nixonpeabody.com)



**Administrative Services**

**William J. Wood, Chief Negotiator**

301 Centennial Mall South  
Lincoln, NE 68509  
402-471-4106  
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## Family Military Leave Act

LB 497 was passed by the Legislature, signed by the Governor and went into effect on April 5, 2007. Family Military Leave is leave requested by an employee who is the spouse or parent of a person called to military service lasting 179 days or longer, with the State or United States pursuant to the orders of the Governor or President of the United States.

**Covered employers:** If the employer employs between 15 and 50 employees, the employer shall provide up to 15 work days of unpaid leave. If the employer employs more than 50 employees, the employer shall provide up to 30 work days of unpaid leave. The State employs more than 50 employees, so employees may request up to 30 work days of leave. The number of days granted are at the discretion of the employer.

**Eligible Employee:** An eligible employee has been employed by the same covered employer for at least 12 months and has been employed for at least 1250 hours during that 12 month period immediately preceding the commencement of leave. Employee is the spouse or parent of a person called to military service lasting 179 calendar days or longer.

**Notice:** The employee shall give at least 14 calendar days of notice of taking leave if the leave will consist of five or more consecutive work days.

**Employee Rights:** When the leave ends, the employee must be restored to the position previously held or to a position with equivalent seniority status, benefits, pay, etc., except when the employer proves the employee is not restored due to reasons unrelated to taking leave.

The employee may continue benefits, during leave, at the employee's expense. The employee's service date will be adjusted after 14 calendar days of unpaid leave.

The Act provides that the employee may negotiate with the employer, for the employer to maintain benefits at the employer's expense during the leave period. As the State had concluded collective bargaining when this Act was passed, for the purpose of benefits, employees taking Family Military Leave will be treated the same as other employees taking non-Family Medical Leave Act unpaid leave. The State contribution to health insurance will continue for the first nine work days of the leave. Taking Family Military Leave shall not result in the loss of benefits accrued before the leave started (treated similar to a leave of absence).

**For Additional Information Contact the DAS Employee Relations Division (William J. Wood 402-471-4106; Jeannie O'Meara 402-471-8292; or Gail Broliar 402-471-4104.)**



# Illinois General Assembly

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## Public Act 094-0589

[Bill Status](#) [Printer-Friendly Version](#) [PDF](#)

### Public Act 094-0589

SB1627 Enrolled

LRB094 10133 RXD 40395 b

AN ACT concerning employment.

**Be it enacted by the People of the State of Illinois,  
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Family Military Leave Act.

Section 5. Definitions. In this Act:

"Employee" means any person who may be permitted, required, or directed by an employer in consideration of direct or indirect gain or profit to engage in any employment. "Employee" does include an independent contractor. "Employee" includes an employee of a covered employer who has been employed by the same employer for at least 12 months, and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.

"Employee benefits" means all benefits, other than salary and wages, provided or made available to employees by an employer and includes group life insurance, health insurance, disability insurance and pensions, regardless of whether benefits are provided by a policy or practice of an employer.

"Employer" means (1) any person, partnership, corporation, association, or other business entity; and (2) the State of Illinois, municipalities and other units of local government.

"Family military leave" means leave requested by an employee who is the spouse or parent of a person called to military service lasting longer than 30 days with the State or United States pursuant to the orders of the Governor or the President of the United States.

Section 10. Family Military Leave Requirement.

(a) Any employer, as defined in Section 5 of this Act, that employs between 15 and 50 employees shall provide up to 15 days of unpaid family military leave to an employee during the time federal or State deployment orders are in effect, subject to the conditions set forth in this Section. Family military leave granted under this Act may consist of unpaid leave.

(b) An employer, as defined in Section 5 of this Act, that employs more than 50 employees shall provide up to 30 days of unpaid family military leave to an employee during the time

federal or State deployment orders are in effect, subject to the conditions set forth in this Section. Family military leave granted under this Act may consist of unpaid leave.

(c) The employee shall give at least 14 days notice of the intended date upon which the family military leave will commence if leave will consist of 5 or more consecutive work days. Where able, the employee shall consult with the employer to schedule the leave so as to not unduly disrupt the operations of the employer. Employees taking military family leave for less than 5 consecutive days shall give the employer advanced notice as is practicable. The employer may require certification from the proper military authority to verify the employee's eligibility for the family military leave requested.

(d) An employee shall not take leave as provided under this Act unless he or she has exhausted all accrued vacation leave, personal leave, compensatory leave, and any other leave that may be granted to the employee, except sick leave and disability leave.

#### Section 15. Employee benefits protection.

(a) Any employee who exercises the right to family military leave under this Act, upon expiration of the leave, shall be entitled to be restored by the employer to the position held by the employee when the leave commenced or to a position with equivalent seniority status, employee benefits, pay and other terms and conditions of employment. This Section does not apply if the employer proves that the employee was not restored as provided in this Section because of conditions unrelated to the employee's exercise of rights under this Act.

(b) During any family military leave taken under this Act, the employer shall make it possible for employees to continue their benefits at the employee's expense. The employer and employee may negotiate for the employer to maintain benefits at the employer's expense for the duration of the leave.

#### Section 20. Effect on existing employee benefits.

(a) Taking family military leave under this Act shall not result in the loss of any employee benefit accrued before the date on which the leave commenced.

(b) Nothing in this Act shall be construed to affect an employer's obligation to comply with any collective bargaining agreement or employee benefit plan that provides greater leave rights to employees than the rights provided under this Act.

(c) The family military leave rights provided under this Act shall not be diminished by any collective bargaining agreement or employee benefit plan.

(d) Nothing in this Act shall be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this Act.

#### Section 25. Prohibited acts.

(a) An employer shall not interfere with, restrain, or deny the exercise or the attempt to exercise any right provided under this Act.

(b) An employer shall not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee that exercises any right provided under this Act.

(c) An employer shall not discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this Act.

Section 30. Enforcement. A civil action may be brought in the circuit court having jurisdiction by an employee to enforce this Act. The circuit court may enjoin any act or practice that violates or may violate this Act and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this Act.

Section 99. Effective date. This Act takes effect upon becoming law.

**Effective Date: 8/15/2005**

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America's Newspapers

## Various military leave laws

**Monterey County Herald, The (CA) - Friday, December 4, 2009**

**Author:** *Jacqueline McManus Workplace Law*

Q: I have a fairly large company in Salinas, and I am revising the leave policies in our employee handbook. I am confused about the array of military-related leave laws.

A: I fully support our troops and want to provide time off as required by law, but I am having a hard time keeping track of the various military-related leaves.

A: It is prudent to review your handbook every few years to update it with new laws, and this year is no exception.

Leave laws are complicated, and the expansion of military-related leaves in the past few years present some challenges for employers.

The military leave laws to be aware of include:

California's new Military Leave Law. On Jan. 1, a new leave law will go into effect in California. The law is Assembly Bill 485, which creates the "Civil Air Patrol: California Wing: Employment Leave."

Under this law, employers are required to provide at least 10 days of unpaid leave per year to employees who are volunteer members of the California Wing of the Civil Air Patrol (the civilian auxiliary of the Air Force).

Employees are eligible if they have been employed 90 days or more at the time they are called to respond to "an emergency operational mission."

This law applies to companies with more than 15 employees. Eligible employees may take this leave in addition to any other leave benefits available.

Upon expiration of the Civil Air Patrol leave, employers are required to restore the employee to the position held when the leave began or to an equivalent position.

California Leave for Spouse or Registered Domestic Partner of Qualified Service member: This leave permits eligible employees to take up to 10 days unpaid leave during the time the employee's spouse or registered domestic partner is on leave from deployment during a period of military conflict.

To be eligible, the employee must be the spouse or registered domestic partner of a member of the U.S. Armed Forces who has been deployed during a period of military conflict to an area designated as a combat theater or combat zone by the president; or a member of the National Guard or Reserves who has been deployed during a period of military conflict.

Employees who work an average of 20 or more hours per week are eligible for this leave.

Federal Family Medical Leave Act (FMLA): The FMLA applies to employers with 50 or more employees.

To qualify for FMLA leave, the employee must have worked for the employer at least one full year (52 weeks). The employee must also have worked at least 1,250 hours during the 12-month period immediately before the leave would begin.

The FMLA provides two types of military leaves:

\* Military caregiver leave: Eligible employees may take up to 26 weeks unpaid leave in a single 12-month period to care for a covered service member.

A covered service member is the employee's spouse, child, parent or next of kin (nearest blood relative) who is a member of the U.S. Armed Forces (including the National Guard or Reserve), who is undergoing medical treatment for a serious injury or illness that occurred any time during the five years preceding the date of treatment, or who is temporarily disabled because of a serious injury or illness incurred in the line of active duty.

This leave is measured from the first day an employee takes leave. Employee health insurance and other benefits must continue for the entire leave period, up to 26 weeks.

\* Qualifying exigency leave: An employee may take up to 12 weeks unpaid leave for one of eight defined nonmedical "qualifying exigencies" arising out of the fact that the employee's parent, child (including an adult child) or spouse is on active duty or is called to active duty in the U.S. Armed Forces, National Guard or Reserves.

Federal and state military leave. Employees who serve in U.S. military organizations or state militia groups may take unpaid leave to fulfill their service obligations. Upon completion of their service, eligible employees are entitled to reinstatement to their position, or to an equivalent position.

When an employee requests leave, it is important to determine if the employee is eligible for leave, and then determine how many leave days the employee is qualified to take.

Jacqueline McManus is a lawyer with the Fenton & Keller law firm in Monterey. This column is intended to answer questions of general interest and should not be construed as legal advice. Mail queries to "Workplace Law," c/o The Monterey County Herald, P.O. Box 271, Monterey 93942.

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**Section:** z\_Jacqueline\_McManus

**Page:** D5

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AMENDMENT

OFFERED IN THE HOUSE

BY REPRESENTATIVE PETERSEN

TO: HB 347

1 Page 2, line 10:

2 Delete "not required to give advance"

3 Insert "required to give"

4

5 Page 2, line 11, following "section":

6 Insert "at least 48 hours in advance; however, if it is not practicable to give notice 48  
7 or more hours in advance, the teacher shall given as much advance notice as is practicable"

8

9 Page 3, line 18:

10 Delete "not required to give advance"

11 Insert "required to give"

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13 Page 3, line 19, following "section":

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17 Page 5, line 9:

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