

SB

278

ALASKA STATE LEGISLATURE

Session
State Capitol, Rm. 115
Juneau, AK 99801
(907) 465-2435
Fax: (907) 465-6615

Interim
716 W. 4th Ave, Ste. 540
Anchorage, AK 99501
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Co-chair
Joint Armed Services Committee
Resources Committee

Member
Energy Committee
Judiciary Committee
World Trade Committee

Senator_Bill_Wielechowski@legis.state.ak.us

SENATOR BILL WIELECHOWSKI

TO: Senator Linda Menard, Chair
Senate State Affairs Committee

FROM: Senator Bill Wielechowski

A handwritten signature in black ink, appearing to be "Bill Wielechowski".

DATE: February 18, 2010

RE: Hearing Request for SB 278



Dear Senator Menard,

I respectfully ask that you schedule a hearing for **SB 278— Leave for Military Spouses**, in the Senate State Affairs Committee.

I intend to request that representatives from the appropriate state agencies and from legislative legal services be present to respond to any questions that may arise. Further, I would like to allow public testimony to be taken statewide by electronic means.

Please feel free to contact my aide George Ascott at 465-2435 with any questions or concerns.

Thank you for your consideration of this request.

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SENATOR BILL WIELECHOWSKI

Sponsor Statement

SB 278 – 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."

Senate Bill 278 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, Rhode Island and Washington in passing similar laws to protect the jobs of military spouses.

26-LS1034\S

Wayne

3/10/10

CS FOR SENATE BILL NO. 278()
IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY**Offered:****Referred:****Sponsor(s): SENATOR WIELECHOWSKI****A BILL****FOR AN ACT ENTITLED**

1 "An Act allowing certain teachers, public employees, and private sector employees to
2 take leave without pay when the spouse or domestic partner of the teacher or public
3 employee or the spouse of the employee not a teacher or public employee is on leave
4 from deployment in a combat zone."

5 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

6 * **Section 1.** AS 14.20.345(b) is amended to read:

7 (b) A leave of absence under this section or AS 14.20.348 is not an
8 interruption of the continuous service necessary to attain or retain retirement or tenure
9 rights under AS 14.20.150, 14.20.155, or 14.20.160. However, the time spent on leave
10 of absence under this section may not be counted in determining when a teacher has
11 sufficient service to enable the teacher to acquire retirement or tenure rights.

12 * **Sec. 2.** AS 14.20 is amended by adding a new section to read:

13 **Sec. 14.20.348. Leave without pay when spouse or domestic partner is on**
14 **leave from military deployment in a combat zone.** (a) Notwithstanding

1 AS 14.20.345(a), a teacher who is employed by an employer that employs any
2 combination of 20 or more full-time, part-time, and temporary employees may take
3 leave without pay, not to exceed 10 regularly scheduled work days in a calendar year,
4 when the teacher's spouse or domestic partner is

5 (1) a member of a regular, reserve, or auxiliary component of the
6 armed forces of the United States or the organized militia under AS 26.05.010 who is
7 deployed during a period of military conflict in a geographic area that is designated a
8 combat zone by the President of the United States; and

9 (2) on leave from the military deployment described in (1) of this
10 subsection for any reason.

11 (b) A teacher is required to give notice of a request for leave under this section
12 at least 14 days in advance, or, if a related medical emergency exists and giving at
13 least 14 days of advance notice is not practicable, the teacher is required to give as
14 much notice as is practicable.

15 (c) An employer may require that a teacher who requests leave under this
16 section provide the employer with verification that, during that leave, the teacher's
17 spouse or domestic partner is, was, or will be on leave from military deployment in a
18 combat zone, as required under (a) of this section.

19 (d) A request for leave that meets the requirements of (a) of this section may
20 not be denied, and a teacher's employer may not, by act or omission, retaliate against
21 the teacher for requesting or taking the leave.

22 (e) A leave of absence under this section

23 (1) is not a break in service for retirement purposes;

24 (2) continues the teacher in pay status, notwithstanding
25 AS 14.20.345(d) and (f), for the purpose of ensuring that the teacher's eligibility for
26 employee benefits, including retirement benefits, is not affected by the leave; and

27 (3) except as provided in (1) and (2) of this subsection, does not entitle
28 the teacher to accrue retirement benefits that would not ordinarily accrue if the teacher
29 were on leave of absence without pay under AS 14.20.345(a).

30 (f) A change to a teacher's terms or conditions of employment is void if its
31 cause is an act of retaliation that violates (d) of this section.

(g) In this section,

(1) "domestic partner" means a person who is cohabiting with another in a relationship that is like a marriage but that is not a legal marriage;

(2) "period of military conflict" means a period of war

(A) declared by the United States Congress; or

(B) in which a member of a reserve component of the armed forces of the United States is ordered to active duty under 10 U.S.C. 12301 or 12302.

* Sec. 3. AS 23.10.105 is amended to read:

Sec. 23.10.105. Posting summary required. An employer subject to AS 23.10.050 - 23.10.150 or 23.10.435 shall keep a summary or abstract of the applicable [THESE] sections, approved by the commissioner, posted in a conspicuous location at the place where a person subject to them is employed. An employer shall be furnished copies of a summary by the state on request without charge. The requirement under this section that a summary or abstract of AS 23.10.435 be posted by the employer may be satisfied by electronic means.

* Sec. 4. AS 23.10 is amended by adding a new section to article 7 to read:

Sec. 23.10.435. Leave without pay when spouse is on leave from military deployment in a combat zone. (a) This section applies to every person that, as an employer, other than the federal or state government or the government of a political subdivision of the state, employs, for 20 weeks or more during the calendar year, any combination of 20 or more full-time, part-time, and temporary employees who average 20 or more hours a week of work for weeks worked in the calendar year and who are compensated under an express or implied contract of hire that is oral or written.

(b) When an employee's spouse is a member of a regular, reserve, or auxiliary component of the armed forces of the United States or the organized militia under AS 26.05.010 who is 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 is on leave from that military deployment for any reason, an employee of an employer described in (a) of this section may take, and the employee's employer shall grant, leave without pay. Leave authorized by this subsection may not exceed 10 regularly

1 scheduled work days in a calendar year, but the authorized leave may be increased
2 beyond 10 days by voluntary agreement between the employer and the employee,

3 (c) An employee is required to give notice of a request for leave under this
4 section at least 14 days in advance, or, if a related medical emergency exists and
5 giving 14 or more days of advance notice is not practicable, the employee is required
6 to give as much notice as is practicable.

7 (d) An employer may require that an employee who requests leave under this
8 section provide the employer with verification that, during that leave, the employee's
9 spouse is, was, or will be on leave from military deployment in a combat zone, as
10 required under (a) of this section.

11 (e) A request for leave that meets the requirements of (b) - (d) of this section
12 may not be denied.

13 (f) A leave of absence under this section

14 (1) is not a break in service for retirement purposes;

15 (2) continues the employee in pay status for the purpose of ensuring
16 that the employee's eligibility for employee benefits, including retirement benefits, is
17 not affected by the leave; and

18 (3) except as provided in (1) and (2) of this subsection, does not entitle
19 the employee to accrue retirement benefits that would not ordinarily accrue when the
20 employee is on other authorized leave without pay.

21 (g) An employer may not

22 (1) hinder or delay the commissioner or an authorized representative of
23 the commissioner in the performance of a duty related to the enforcement of this
24 section;

25 (2) refuse to admit the commissioner or an authorized representative of
26 the commissioner to any place of employment as may be required for the enforcement
27 of this section;

28 (3) refuse to make a record accessible, or to furnish a sworn statement
29 of the record, or to give information required for the enforcement of this section, upon
30 demand, to the commissioner or an authorized representative of the commissioner;

31 (4) fail to post a summary or abstract of this section as required by

1 AS 23.10.105; or

2 (5) discharge or in any other manner discriminate or retaliate against
3 an employee because the employee requests the leave, takes the leave, files a
4 complaint, institutes or causes to be instituted any proceeding under or related to this
5 section, or testifies or is about to testify in a proceeding under or related to this
6 section.

7 (h) If an employer violates (g) of this section, the affected employee may
8 bring a civil action to recover wages lost as a result of the violation and other damages
9 that resulted from the violation, and may also seek an order requiring the reinstatement
10 of the employee.

11 (i) The commissioner shall adopt regulations to implement this section.

12 (j) In this section, "period of military conflict" means a period of war

13 (1) declared by the United States Congress; or

14 (2) in which a member of a reserve component of the armed forces of
15 the United States is ordered to active duty under 10 U.S.C. 12301 or 12302.

16 * **Sec. 5.** AS 39.20 is amended by adding a new section to read:

17 **Sec. 39.20.285. Leave without pay when spouse or domestic partner is on**
18 **leave from military deployment in a combat zone.** (a) This section applies to every
19 person who is a paid employee of

20 (1) the executive, judicial, or legislative branch of state government, a
21 state public corporation or council established by law, or the University of Alaska,
22 whether the employee is a permanent, nonpermanent, or temporary employee, who is
23 employed for an average of 20 or more scheduled hours each week, but does not
24 include employees of the Alaska Railroad Corporation;

25 (2) a political subdivision of the state.

26 (b) An employee may take leave without pay, not to exceed 10 regularly
27 scheduled work days in a calendar year, when the employee's spouse or domestic
28 partner is

29 (1) a member of a regular, reserve, or auxiliary component of the
30 armed forces of the United States or the organized militia under AS 26.05.010 who is
31 deployed during a period of military conflict in a geographic area that is designated a

1 combat zone by the President of the United States; and

2 (2) on leave from the military deployment described in (1) of this
3 subsection for any reason.

4 (c) An employee is required to give notice of a request for leave under this
5 section at least 14 days in advance, or, if a related medical emergency exists and
6 giving 14 or more days of advance notice is not practicable, the employee is required
7 to give as much notice as is practicable.

8 (d) An employer may require that an employee who requests leave under this
9 section provide the employer with verification that, during that leave, the employee's
10 spouse or domestic partner is, was, or will be on leave from military deployment in a
11 combat zone, as required under (a) of this section.

12 (e) A request for leave that meets the requirements of (b) of this section may
13 not be denied, and an employee's employer may not, by act or omission, retaliate
14 against the employee for requesting or taking the leave.

15 (f) A leave of absence under this section

16 (1) is not a break in service for retirement purposes;

17 (2) continues the employee in pay status for the purpose of ensuring
18 that the employee's eligibility for employee benefits, including retirement benefits, is
19 not affected by the leave; and

20 (3) except as provided in (1) and (2) of this subsection, does not entitle
21 the employee to accrue retirement benefits that would not ordinarily accrue when the
22 employee is on other authorized leave without pay.

23 (g) A change to an employee's terms or conditions of employment is void if its
24 cause is an act of retaliation that violates (e) of this section.

25 (h) The director of personnel in the Department of Administration shall adopt
26 regulations to implement this section as it applies to employees described in (a)(1) of
27 this section.

28 (i) In this section,

29 (1) "domestic partner" means a person who is cohabiting with a
30 another in a relationship that is like a marriage but that is not a legal marriage;

31 (2) "period of military conflict" means a period of war

1 (A) declared by the United States Congress; or

2 (B) in which a member of a reserve component of the armed
3 forces of the United States is ordered to active duty under 10 U.S.C. 12301 or
4 12302.

5 * Sec. 6. AS 39.20.310 is amended to read:

6 **Sec. 39.20.310. Exceptions.** Except as provided in AS 39.20.275 **and**
7 **39.20.285**, AS 39.20.200 - 39.20.330 do not apply to

8 (1) members of the state legislature, the governor, the lieutenant
9 governor, and justices and judges of the supreme and superior courts and of the court
10 of appeals, but nothing in AS 39.20.200 - 39.20.330 may be construed to diminish the
11 salaries fixed by law for these officers by reason of absence from duty on account of
12 illness or otherwise;

13 (2) magistrates serving the state on less than a full-time basis;

14 (3) officers, members of the teaching staff, and employees of the
15 University of Alaska;

16 (4) persons employed in a professional capacity to make a temporary
17 and special inquiry, study, or examination as authorized by the governor, the
18 legislature, or a legislative committee;

19 (5) members of boards, commissions, and authorities who are not
20 otherwise employed by the state;

21 (6) temporary employees hired for periods of less than 12 consecutive
22 months;

23 (7) persons employed by the division of marine transportation as
24 masters and members of the crews operating the state ferry system who are covered by
25 collective bargaining agreements as provided in AS 23.40.040, except as expressly
26 provided by law;

27 (8) persons employed by the state who are covered by collective
28 bargaining agreements as provided in AS 23.40.210, except as expressly provided by
29 law.

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 278(), Draft Version "S"

1 Page 4, following line 6:

2 Insert a new subsection to read:

3 "(d) If the employee who requests leave is covered by medical insurance that
4 is provided through the employer, the employer shall allow the employee to continue
5 the coverage without interruption during the leave. The employee shall pay the
6 expense of continuing medical insurance coverage during leave under this section
7 unless the employer and the employee agree otherwise."
8

9 Reletter the following subsections accordingly.
10

11 Page 4, line 11:

12 Delete "(b) - (d)"

13 Insert "(b), (c), and (e)"
14

15 Page 4, line 17, following "leave":

16 Insert "except as provided in (d) of this section"
17

18 Page 5, line 7:

19 Delete "(g)"

20 Insert "(h)"

AMENDMENT

OFFERED IN THE SENATE

TO: CSSB 278(), Draft Version "S"

1 Page 2, line 1:

2 Delete "a teacher who is employed by an employer that employs"

3 Insert "a person who is employed as a teacher at a school where"

4

5 Page 2, line 2, following "employees":

6 Insert "are employed"

SB 278 - Leave for Military Spouses
List of Anticipated Changes in Committee Substitute (Senate State Affairs)
Largely based on other state statutes

Require 14 days advance notice to employer— except in the case of medical emergencies. In the case of medical emergencies, "as soon as is practicable." (This language mirrors that in the Federal Family Medical Leave Act).

From discussions with ASD Superintendant Comeau, at least 10 days notice would typically be needed, although in the case of medical emergencies they can provide leave without advance notice.

Allow for electronic posting of notice

pg 2, line 11-14
pg 4, line 3-6
pg 6, line 4-7

This was also suggested by Superintendant Comeau.

pg 3 14-16

Allow employers to request documentation of spouse's combat leave

This was added at the suggestion of committee members.

pg 2, line 15-18; pg 4 ln 7-10; pg 6 line 8-11

Private employers shall make it possible continue benefits at employee's own expense

Under the current version, the employer must pay for the continued benefits.

pg 4 ln 1-2. MISTAKE
Amend S.1

Make the penalties the same as those for jury duty (AS 09.20.037) as opposed to those under AS 23.10.110 (unpaid overtime).

pg 5 ln 3, 7-10

Make the bill apply to only employees who work 20 or more hours per week.

pg 3 21-23

Make the bill apply only to employers with 20 or more employees for more than 20 calendar weeks of the year.

This was added to protect seasonal businesses.

pg 3 21-23

Make the bill apply only to schools with 20 or more employees, as opposed to school districts.

This is in response to concerns that rural schools with only one or two teachers would not be able to function with the sudden loss of a teacher. This change would have the desired effect according to conversations with district superintendents.

pg 2 ln 1-2 Amend. S.2

Make the bill apply to domestic partners (private employers will be exempted from this requirement).

pg 2 line 4, pg 3, line 2, pg 5 ln 27-28, pg 6 ln 29

Clarify that the leave be taken only during leave from deployment, not before deployment or after.

This change may not be made. According to the drafter, this is already covered in the bill.

pg 2, line 9-10
pg 6, line 2-3

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SENATOR BILL WIELECHOWSKI

SB 278 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.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: _____
Bill Version: SB 278
() Publish Date: _____

Identifier (file name): SB278-DOA-DOPLR-02-23-10 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: Sen. Wielechowski
Requester: (S)STA 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
OPERATING EXPENDITURES								
Personal Services								
Travel								
Contractual								
Supplies								
Equipment								
Land & Structures								
Grants & Claims								
Miscellaneous								
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

CAPITAL EXPENDITURES								
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CHANGE IN REVENUES ()								
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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								
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0

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
Division: Personnel and Labor Relations
Approved by: Kevin Brooks, Deputy Commissioner
Department of Administration

Phone 465-4429
Date/Time 2/23/10 12:00 AM
Date 2/23/2010



ALASKA STATE COUNCIL

February 24, 2010

Senator Wielechowski
Alaska State Senate
Juneau, Alaska

Senator Wielechowski:

On behalf of the members of Vietnam Veterans of America now living in Alaska we want to express our support for **SB278**. 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 SB278 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 noticed 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 SB278 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

3705 Arctic Blvd #415, Anchorage, Alaska 99503
907 222 6945 907 222 6933 fax 907 229 5328 Chairman's Cell 907 748 1722 Ex Dir

MEMORANDUM for the STATE OF ALASKA

To: Senator Bill Wielenchowski

Date: 23 Feb 2010

From: Verdie Bowen
Director, Office of Veterans Affairs

Phone: 907-428-6016

Subject: Senate Bill No. 278 (Leave for Military Spouse)

I support Senate Bill 278 in its entirety. SB 278 will provide the necessary transitional help required by our Active and National Guard members upon their return from deployment. The key element in their transition is a strong spousal support unit. This spousal support is pivotal to their transition back to an integrated civilian/local military life. One thing to keep in mind during this transition is those military members who have supporting spouses are less likely to have transitional issues than those with no spousal support at all.

Please support SB 278. This could prove to be one of the best support efforts the state can provide our returning service members.

v/r

Verdie A. Bowen

Verdie A. Bowen
Director, Office of Veterans Affairs
State of Alaska
Po Box 5800 B216
Ft Richardson, AK 99505-5800
907.428.6016 (Office)
907.354.752 (Cell)
907.428.6019 (Fax)
Verdie.bowen@alaska.gov



ALASKA VETERANS FOUNDATION

February 24, 2010

Senator Bill Wielechowski
Alaska State Senate
Juneau, AK
REF: SB 278

Senator Wielechowski,

One would think that if an employee came to you and said, "My husband has been wounded in Iraq and I need to go to him right now. Can I get ten days, without pay, to go be by his side?"

or

"My wife, who has been in Afghanistan for over a year, has R&R, but she can't come back to Anchorage, so I'd like to take ten days off, without pay, to go and see her in Germany. Can we do that?"

How do we really support our troops? Bumper stickers? Yellow ribbons? Public speeches on Memorial Day or Veterans Day? What do we really do to show support for the few men and women – the few Americans, willing to stand guard for America and push the frontier of human freedom in parts of the world bent on killing every one of us?

Most of us would do anything we could to help either of these spouses go to their loved one. But there are employers who will not.

We thought the Federal Family Leave Act would have addressed these kinds of issues, but it doesn't appear to be the case. It looks like we need a state law to enable those who stay home and fight every day in a different battle while their loved ones are overseas, to see their wounded warrior or visit their loved one when that opportunity suddenly becomes available.

The NFIB whines that these employees don't give enough notice. Do the enemies of America give notice when they decide to wound an American warrior? Does the Army give a warrior enough notice for R&R? – not always.

How do we support our troops? Passage of this bill and its companion HB347 in the House is one way Alaska makes it clear – As a state, as a people, we support those few men and women willing to stand guard for America.

It is an honor,

Ric Davidge
Chairman



3705 Arctic Blvd #415, Anchorage, AK 99503 907 222 6945 fax 907 222 6933
Ricdavidge.ak@gci.net

Senator Wielechowski
Alaska State Sente
Juneau, AK
REF: SB278

I am writing to express my support of SB 278, Leave for Military Spouses

As I walked through the Anchorage Airport and reflected on the Banner saying "Welcome Home to our Troops", I had to ask whether the welcome home was simply limited to outside the work hours or at times convenient to others. I see military members and here them regularly being thanked for their service. Yet, I also realize that they have volunteered to serve. And in volunteering, they have also volunteered to give up family time, to miss loved ones and loved ones' events. As a military brat, I missed birthdays, holidays, and family celebrations without a father available. As a military spouse, I saw the days missed by our children as their father was deployed. In either case, I feel that time off should not be stolen moments from the workplace, but precious moments that build a stronger family and strengthen the workplace. It is too bad that we need to make a law that will allow the decision to volunteer earnings for cherished moments. But sometimes, we have to do the right thing for the right reasons. As a spouse and family members, that is often easier to see and understand in the home than as an employee or employer in the workplace.

As you present SB 278, thank you for recognizing that spouses are willing to volunteer to share their time with their returning loved one, who for the moment is out of harms way. And this time is not doing harm to the workplace, when the recognition and support makes for stronger families and stronger employees.

Thank you,



Paula Pawlowski
3300 Balchen Dr.
Anchorage, AK 99517
907-223-0628

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@gci.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 aside 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@cvalaska.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

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 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@qci.net rdavidge@cylaska.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

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TTY: 1-866-487-9243
Contact Us



Jackson Lewis


Preventive Strategies and
Positive Solutions for the Workplace

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

Record Number: story_20747347

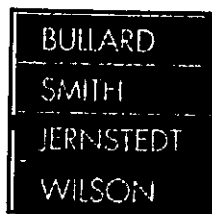
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Oregon Military Leave Act now in effect


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). 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. Thank you.

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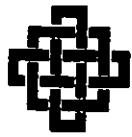
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New York Enacts the Military Spouse Leave Act

New York has become the first state to require employers¹ to grant unpaid leave to employees² 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 conflict³ 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 for further information.

¹ 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.

² 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.

³ 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 RIFFMLA, 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 RIFFMLA leave time.

Like the FMLA and the RIFFMLA, 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
- Jillian S. Folger-Hartwell at 401-454-1046 or jfolgerhartwell@nixonpeabody.com

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William J. Wood, Chief Negotiator

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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.)



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Public Act 094-0589

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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 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 of 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

Record Number: 17657234

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SENATE COMMITTEE REPORT

First Committee of Referral

DATE: 2/12/10

FURTHER: Labor and Commerce

Date of 5-Day Notice: _____
 (in accordance with Uniform Rule 23)

DATE TURNED
 IN TO OFFICE: 3/11/10

State Affairs Committee considered SENATE BILL NO. 278

SB 278 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."

and recommends:

- be replaced with SCS or CS SB 278 (STA)
- adopt previous SCS or CS _____
- attached amendment(s)
- adopt _____ Letter of Intent
- further referral to _____ Committee

SENATE BILL:	
<input type="checkbox"/>	Same Title
<input checked="" type="checkbox"/>	New Title
<hr/>	
HOUSE BILL:	
<input type="checkbox"/>	Same Title
<input type="checkbox"/>	Technical Title Change
<input type="checkbox"/>	New Title w/ SCR # _____

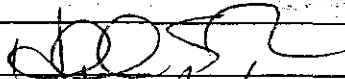
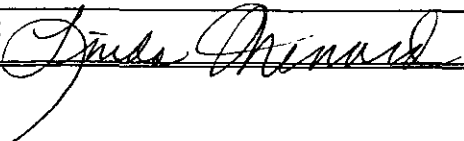
NEW FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#
Admin	02/23/10			X	

PREVIOUS FISCAL NOTE(S):

Department	Date	Fiscal	Indet.	Zero	FN#

APPROPRIATION - no fiscal note

SIGNATURES AND RECOMMENDATIONS:	PRINTED LAST NAME	DO PASS	DO NOT PASS	NO REC	AMEND
	French	✓			
Joe Paskum	PASKUM				X
Albert Kookesh	Kookesh				X
CHAIR: 	MENARD	✓			

NFIB

The Voice of Small Business®

ALASKA

February 17, 2010

The Honorable Bill Wielechowski
State Capitol Building
Juneau, Alaska 99801-1182

RE: Senate Bill 278

Dear Senator Wielechowski:

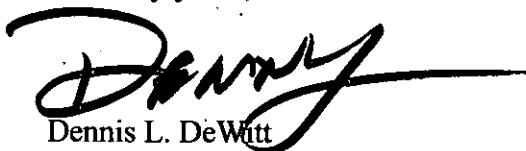
On behalf of the National Federation of Independent Business/Alaska, I wish to express our opposition to Senate Bill 278. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

Senate Bill 278 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
~~Senate State Affairs Committee~~

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.

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