

One Minute Memo[®]



California Enacts Family Military Leave Act

California follows Illinois, Indiana, Maine, Minnesota, Nebraska, and New York and has enacted a family military leave act that is effective immediately. The Act requires covered employers to provide up to ten days of unpaid leave to eligible employees who are spouses of deployed military servicemen and servicewomen. The leave may be taken when the military spouse is on leave from deployment during a time of military conflict. The Act appears in Section 395.10 of the California Military and Veterans Code.

Employer Coverage

The Act applies to any “qualified employer” with 25 or more employees. A “qualified employer” is any individual, corporation, company, firm, state, city, county, city and county, municipal corporation, district, public authority, or any other governmental subdivision.

Employee Eligibility, Notice, and Documentation

To be a “qualified employee” eligible for family military leave, an employee must work an average of 20 or more hours per week and be the spouse of a “qualified member” of the United States Armed Forces, National Guard, or Reserves. A “qualified member” is a member of the United States 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 of the United States, or a member of the National Guard or Reserves who has been deployed during a period of military conflict.

To be eligible for leave, the employee also must provide the employer with (1) notice of intention to take family military leave within two business days of receiving official notice that the employee’s military spouse will be on leave from deployment, and (2) documentation certifying that the employee’s military spouse will be on leave from deployment during the time that the employee requests leave. The Act does not specify what type of written documentation can be required by employers, or whether an employer can mandate the leave to be taken at a more convenient time.

Impact on Other Leave Provisions

The Act provides that an employee’s eligibility for family military leave shall not affect or prevent an employer from allowing an employee to take any other leave to which the employee is otherwise entitled. The Act does not affect an employee’s rights with respect to any other employee benefit provided for in other laws.

No Discrimination or Retaliation

Employers may not retaliate or otherwise discriminate against an employee for requesting or taking family military leave.

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Registered Domestic Partners

The statute does not address whether registered domestic partners are eligible for family military leave. The California Domestic Partner Act, which became effective January 1, 2005, provides that registered domestic partners are entitled to many of the same rights, protections and benefits afforded to spouses. Since the family military leave act establishes rights, protections, and benefits for spouses, registered domestic partners may also be eligible for family military leave.

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