



What Should Employers Do By January 16, 2009?

We urge all employers to engage their legal counsel and update policies and procedures. Please remember these are changes to federal law and you must take into account any relevant state and local leave laws. We have identified three key areas for your review:

I. Get Your Policies Up To Date

a. Add new Family Military Leave provisions

- i. Military Caregiver Leave
- ii. Qualifying Exigency Leave

b. Review policies for changes

- i. Definition of Serious Health Condition has been updated
 - 1. Continuing treatment
 - 2. Chronic health condition
- ii. Medical and fitness for duty certifications
 - 1. Must be HIPAA compliant
 - 2. Employer may call the employee's health care provider (manager or HR can call but supervisor cannot)
 - 3. Written notice of certification deficiencies required
- iii. Employee obligations to provide notice
- iv. Substitution of paid leave
 - 1. Employers are allowed to apply normal leave policies for paid leave applied to unpaid FMLA leave.
- v. Application of FMLA to safety, attendance, or other bonus or payments
- vi. Changes in leave provisions and key definitions– intermittent leave, adoption, employee's adult children

II. Make sure postings and forms are current and accurate

- a. Updated General Notice posting – every workplace and handbook**
- b. Personalized eligibility notice**
- c. Four new certification forms**

III. Review and update your process

Employer, and if applicable, administrator, processes and procedures are typically based on a combination of mandated and employer-specific policies. We recommend strongly that you examine your current processes and procedures to ensure they conform to the changes described above.

Please click [here](#) for the ICS Briefing Part II detailing the key changes to the Family and Medical Leave Act and a link to the Department of Labor's Final Rule.