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Indiana's Family Military Leave Act, which will take effect July 1, 2007, requires employers with at least 50 employees to permit employees who are related to military personnel to take up to 10 days of unpaid leave when a relative is ordered to active duty.

## Midwest Edition

*A Littler Mendelson Midwest-specific Newsletter*

### Indiana's Military Family Leave Act Takes Effect July 1

*By Dustin D. Stohler*

Governor Daniels recently signed the Indiana Military Family Leave Act, which will take effect July 1, 2007. The Act permits certain relatives of military personnel to take an unpaid leave of absence of up to 10 working days if a relative is ordered to active duty. The Act requires employers to continue the employee's healthcare benefits at the employee's expense and reinstate the employee when the leave ends. Employers that violate the Act can be ordered to provide "any ... equitable relief that is just and proper under the circumstances." This could include reinstatement of terminated employees and backpay. Employers should take steps now to comply with the Act and to ensure that their rights under the Act are protected.

#### Who Is Eligible?

The Act applies to employers that employ at least 50 employees. An eligible employee is one who: (1) has been employed for at least 12 months; (2) has worked at least 1,500 hours during the 12 months before the leave begins; and (3) is the spouse, parent, grandparent, or sibling of a person who is ordered to full time active duty for a period that exceeds 89 consecutive calendar days ("soldier").

#### Benefits

An eligible employee is entitled to take up to 10 days of unpaid leave during: (1) the 30 days before and after the soldier is on active duty; and (2) while the soldier is on leave during active duty. Employees can take up to 10 days of leave per year under the Act, so an employee is not entitled to additional leave if another relative is called to active duty. Employees must be permitted to con-

tinue healthcare benefits at the employee's expense while on leave. The Act entitles employees to 10 days of leave "per year" but does not address whether leave can be calculated on a fiscal year basis or on the rolling 12 month basis permitted under the FMLA. Therefore, employers should allow eligible employees to take up to 10 days of military leave between January 1 and December 31 of each year. Finally, the Act does not require the employee to take all 10 days of leave at once and seems to contemplate employees using the leave in increments of less than 10 days. Nothing in the Act, however, appears to prohibit employers from requiring employees to take the leave in 1 day increments.

After an employee takes leave under the Act, an employer is required to restore the employee to the position the employee held before taking leave or an equivalent position. An employer is not required to reinstate an employee if the *employer* proves that the reason the employee was not reinstated is unrelated to the employee's leave.

#### Employers Have Rights Too!

Under the Act, an employee is required to give at least 30 days notice before the date on which the employee intends to begin leave unless the soldier's orders are issued less than 30 days before leave is to begin. Further, an employer may require the employee to verify eligibility for the leave and may consider an employee's absence from employment unexcused if verification is not provided.

Employers may require employees to use any paid vacation leave, personal leave, or other paid leave while on leave under the

Act. Employers *may not*, however, require employees to use any paid medical or sick leave available to the employee.

## Bottom Line

Indiana employers with more than 50 employees should take steps now to ensure their ability to comply with the Act in the future. Employers should adopt a military leave act policy that mirrors the language of the new statute. Further, employers should modify attendance policies to ensure that leave taken under Indiana's Military Leave Act will not be considered an unexcused absence. Individuals responsible for administering attendance policies need to be aware of the new law and all supervisors or managers responsible for supervising employees who take leave under the Act should be made aware that time taken under the Military Leave Act cannot be counted against the employee for purposes of discipline, promotion or termination.

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