

Indiana's New Military Family Leave Act

As of July 1, 2007, Indiana requires an employer with at least 50 employees during each working day of any 20-week period to provide up to 10 days of unpaid leave to an employee who has an active duty military family member. *See* Ind. Code 22-2-13-1 *et seq.* However, the benefits of the Indiana Military Family Leave Act ("Act ") are limited to the spouse, parent, grandparent or sibling of a person who is ordered to active duty. For purposes of the Act, a "parent" is not only the biological mother or father, but an adoptive mother or father, or court-appointed guardian or custodian. In addition, a "sibling" is not only a brother or sister, but also a half-brother, half-sister, or brother or sister through adoption. However, a "grandparent" must be a biological grandparent.

In order to be eligible under the Act, the employee must have been employed by the employer over the previous twelve (12) months, and have worked at least 1,500 hours during the twelve (12) months before the requested leave period. In addition, the soldier must be performing full-time service for longer than 89 consecutive calendar days.

An employee can take the leave of absence while the soldier is on leave from a qualifying active duty period, or during the thirty days before or after the active duty period. The leave of absence is allowed for a maximum of ten days each year. The Act is not specific on whether leave time should be granted on a calendar year or rolling year basis, however, we recommend employers use a calendar year until the Indiana courts clarify this provision.

To be eligible for military family leave, an employee must provide written notice thirty (30) days before the intended leave of absence. This written notice should include the active duty orders, if they are available. Active duty orders which are issued less than thirty (30) days before the intended leave are an exception to this rule. The employer may also require the employee to utilize available vacation or personal time during the ten (10) day leave period. However, an employee cannot be required to utilize her medical or sick leave in the same manner. Further, the employer must allow the employee to continue his health insurance coverage at the employee's expense during the leave period.

An employee returning from leave must be restored to the same position he held before his leave, or its equivalent, with the same or equivalent seniority, pay, and benefits.

Employers with more than 50 employees should ensure compliance by taking the following steps: First, employers should confirm that it employs more than 50 people during each working day of any 20-week period, otherwise the Act does not apply. Second, the employer should adopt a military leave policy that is consistent with the Act's requirements and publish it to its employees. Third, the employer should educate employees as to the benefits and limitations of the Act. Finally, proper recordkeeping and notification procedures should be implemented to ensure that each employee takes only the appropriate amount of leave, and that military leave is not confused with other leaves of absence.