

§814. Family military leave

1. Definitions. As used in this section, unless the context otherwise indicates, the following terms have the following meanings.

A. "Deployed for military service" or "deployment" means active military duty with the state military forces, as defined in Title 37-B, section 102, or the United States Armed Forces, including the National Guard and Reserves, whether pursuant to orders of the Governor or the President of the United States, when the duty assignment is in a combat theater or in an area where armed conflict is taking place. [PL 2005, c. 523, §2 (NEW).]

B. "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 and 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 employee's family military leave. [PL 2007, c. 388, §1 (AMD).]

C. "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. [PL 2005, c. 523, §2 (NEW).]

D. "Employer" means:

- (1) Any person, partnership, corporation, association or other business entity; and
- (2) The State, a county, a municipality or any political subdivision. [PL 2005, c. 523, §2 (NEW).]

E. "Family military leave" means leave requested by an employee who is the spouse, domestic partner or parent of a person who is a resident of the State and is deployed for military service for a period lasting longer than 180 days with the State or United States pursuant to the orders of the Governor or the President of the United States. [PL 2005, c. 523, §2 (NEW).]
[PL 2007, c. 388, §1 (AMD).]

2. Family military leave requirement. Subject to the requirements of subsection 3, an employer that employs 15 or more employees shall provide each eligible employee up to 15 days of family military leave per deployment, if requested by the employee. Family military leave under this subsection may be taken only during one or more of the following time frames:

- A. The 15 days immediately prior to deployment; [PL 2007, c. 388, §2 (NEW).]
- B. Deployment, if the military member is granted leave; or [PL 2007, c. 388, §2 (NEW).]
- C. The 15 days immediately following the period of deployment. [PL 2007, c. 388, §2 (NEW).]

Family military leave granted under this section may consist of unpaid leave.
[PL 2007, c. 388, §2 (RPR).]

3. Notice requirements. An employee taking family military leave under this section is subject to the following.

- A. The employee must 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. [PL 2005, c. 523, §2 (NEW).]
- B. An employee taking family military leave for fewer than 5 consecutive work days must give the employer advance notice as is practicable. [PL 2005, c. 523, §2 (NEW).]
- C. The employee shall consult with the employer to attempt to schedule the leave so as to not unduly disrupt the operations of the employer. [PL 2005, c. 523, §2 (NEW).]

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4. Certification. An employer may require certification from the proper military authority to verify an employee's eligibility for the family military leave requested pursuant to this section.

[PL 2005, c. 523, §2 (NEW).]

5. Restoration to position. An employee who exercises the right to family military leave under this section is entitled, upon expiration of the leave, 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 subsection does not apply if the employer proves that the employee was not restored as provided in this subsection because of conditions unrelated to the employee's exercise of rights under this section.

[PL 2005, c. 523, §2 (NEW).]

6. Employee benefits protection. An employer shall make it possible for an employee to continue employee benefits at the employee's expense during any family military leave taken under this section. The employer and employee may negotiate for the employer to maintain employee benefits at the employer's expense for the duration of the leave.

A. Taking family military leave under this section does not result in the loss of any employee benefit accrued before the date on which the leave commenced. [PL 2005, c. 523, §2 (NEW).]

B. Nothing in this section may 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 section. [PL 2005, c. 523, §2 (NEW).]

C. The family military leave rights provided under this section may not be diminished by any collective bargaining agreement or employee benefit plan. [PL 2005, c. 523, §2 (NEW).]

D. Nothing in this section may be construed to affect or diminish the contract rights or seniority status of any other employee of any employer covered under this section. [PL 2005, c. 523, §2 (NEW).]

[PL 2005, c. 523, §2 (NEW).]

7. Prohibited acts. An employer may not:

A. Interfere with, restrain or deny the exercise or the attempt to exercise any right provided under this section; [PL 2005, c. 523, §2 (NEW).]

B. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee who exercises any right provided under this section; or [PL 2005, c. 523, §2 (NEW).]

C. Discharge, fine, suspend, expel, discipline or in any other manner discriminate against any employee for opposing any practice made unlawful by this section. [PL 2005, c. 523, §2 (NEW).]

[PL 2005, c. 523, §2 (NEW).]

8. Enforcement. An employee may bring a civil action in Superior Court to enforce this section. The court may enjoin any act or practice that violates or may violate this section and may order any other equitable relief that is necessary and appropriate to redress the violation or to enforce this section.

[PL 2005, c. 523, §2 (NEW).]

SECTION HISTORY

PL 2005, c. 523, §2 (NEW). PL 2007, c. 388, §§1, 2 (AMD).

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