



DEPARTMENT OF DEFENSE
CIVILIAN PERSONNEL MANAGEMENT SERVICE
1400 KEY BOULEVARD
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September 17, 2008

MEMORANDUM FOR: SEE DISTRIBUTION

SUBJECT: Guidance on Family and Medical Leave Act and Voluntary Leave Transfer to Wounded Veterans – Application to Nonappropriated Fund (NAF) Employees

The FY08 National Defense Authorization Act (NDAA), P.L. 110-181, signed into law on January 28, 2008, included amendments to the Family and Medical Leave Act (FMLA), and to title 5, United States Code (U.S.C.) provisions covering the voluntary leave transfer program. This memo clarifies the application of those amendments to NAF employees.

Family and Medical Leave to Care for Injured Members of the Armed Forces. Section 585 of P.L. 110-181 amended the FMLA to permit a “spouse, son, daughter, parent, or next of kin” to take family leave to care for a covered member of the Armed Forces. NAF employees are covered by the FMLA (see DoD 1400.25-M, SC1406.2.2.5.). As stated in SC1406.2.2.5.1., Regular and Flexible employees assigned to positions without a documented time limit, or a “not to exceed” date, who have completed at least 12 months of service (not required to be 12 recent or consecutive months) are covered under Title II of the FMLA. DoD administratively extends Office of Personnel Management (OPM) regulations, published in 5 CFR, Subpart L, to NAF activities and employees covered under Title II. Per OPM’s February 1, 2008, memo to Heads of Executive Departments and Agencies (see CPM 2008-04, found at <https://www.opm.gov/oca/compmemo/2008/2008-04.asp>), OPM will issue updated regulations to meet the new statutory provisions in Section 585(b) of P.L. 110-181 that are applicable to federal employees. Until these regulations are issued, if a Title II covered employee qualifies for leave under the new provisions, every effort should be made to provide leave in accordance with the legislation.

Employees serving under a Flexible appointment with a stated time limitation or “not to exceed” date of one year or less are subject to the provisions of Title I of the FMLA. Title I is regulated by the Department of Labor (DoL). The DoL proposed regulations are published in the Federal Register of February 11, 2008, (<http://www.dol.gov/esa/whd/fmla/FedRegNPRM.pdf>). Additional information for Title I covered employees can be found at: http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm.

Voluntary Leave Transfer to Federal Employees who are Wounded Veterans.

Section 1675 of P.L. 110-181 amends 5 U.S.C. 6333(b) to allow certain wounded veterans to participate in the Voluntary Leave Transfer Program without having to exhaust their own paid leave. DoD 1400.25-M, SC1406.2.2.6. provides NAF Components with discretion to provide for leave donation and leave bank programs, therefore, the new leave transfer provision may be incorporated into such programs in accordance with OPM's implementing regulations.

Questions relating to this guidance may be directed to Ms. Lynn Wright at 703-696-6539 (DSN 426-6539).



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