

TO: Local Health Department Director
Local Health Department Personnel Staff

FROM: Ron Horseman
Human Resource Branch Manager
Local Health Personnel Branch

DATE: September 8, 2009

RE: FMLA “Qualifying Exigency” leave and substitution of paid leave

One of the significant changes to the FMLA as a result of the 2008 amendment to the Act, was the addition of “any qualifying exigency” as an acceptable entitlement to FMLA leave. We would like to provide further clarification to the agencies regarding this particular type of FMLA leave and the leave provisions allowed under both the federal regulations and our Local Health Department (LHD) administrative regulations.

The U.S. Department of Labor (DOL) defines “qualifying exigency leave” as leave that may be taken for any qualifying exigency (pressing or urgent situation) arising out of the fact that a covered military member is on active duty or call to active duty status. This will permit eligible employees who are family members of a covered military member to take FMLA leave to address the most common issues that arise when a covered military member is deployed, such as:

- *attending military-sponsored functions
- *making appropriate financial and/or legal arrangements
- *arranging for alternative childcare
- *any other event that the employee AND employer agree is a qualifying exigency

While “any qualifying exigency” is now an additional entitlement to an eligible employee to take FMLA leave, the federal regulations governing substitution of paid leave defer to the employer. U.S. DOL states that “an employee electing to use paid leave concurrently with FMLA leave must follow the same terms and conditions of the employer’s policy that apply to other employees for the use of such leave.”

So, an LHD employee that is eligible to take FMLA leave for “any qualifying exigency” must continue to follow the administrative regulations and established agency policy for leave provisions, regarding proper notice and use of annual or sick leave.

As always, if you have any questions or need additional clarification on this, please feel free to contact the Local Health Personnel Branch.

Thank you!