



# The Guardian

Helping to Protect You from Employment Law Claims

**BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, PLLC**

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**125 North Granite Street, Prescott, AZ 86301**

**Phone 928-445-0122**

**Fax 928-445-8021**

The attorneys of **BOYLE, PECHARICH, CLINE, WHITTINGTON & STALLINGS, PLLC**

Robert S. Pecharich	Barry B. Cline
William R. Whittington	John C. Stallings
Donald C. Zavala, Jr.	G. Eugene Neil
	Jonathan A. Millet

## SIGNIFICANT CHANGES TO THE FAMILY AND MEDICAL LEAVE ACT

The Department of Labor recently approved revised regulations for the Family and Medical Leave Act ("FMLA"). These revised regulations make significant changes to leave procedures under the FMLA. The new regulations become effective on January 16, 2009.

Among other things, the final regulations implement two important new military family leave entitlements:

1. Up to 12 weeks of leave for certain "qualifying exigencies" arising out of a covered military member's active duty status, notification of an impending call or order to active duty status in support of a contingency operation, and
2. Up to 26 weeks of leave in a single 12-month period to care for a covered servicemember recovering from a serious injury or illness incurred in the line of duty and while on active duty.

Some of the other more significant changes in the FMLA regulations include:

- There is a new FMLA poster which must be used and is available at: <http://www.dol.gov/esa/whd/fmla/finalrule/FMLAPoster.pdf>
- There are several new forms, including a new Eligibility/Rights and Responsibility notice, a "Designation" notice and Military Leave forms.
- Employers now have five days (as opposed to two) to notify employees of their eligibility to take FMLA leave.
- Retroactive designation is possible in certain circumstances.
- New medical certification forms now allow the employer to gather additional information.
- Employers must now notify employees of deficiencies in the medical certification (within seven days).
- Employers can require new medical certifications every new leave year.
- Employers can require recertification every six months.
- There are new rules relating to intermittent leave, including that employers can ask for "fitness for duty" certifications for intermittent leave.
- Employees are now required to provide additional information explaining their reasons for requesting FMLA leave (calling in sick in not considered sufficient).
- Light duty does not count towards FMLA entitlement.

### NEW I-9 FORMS

U.S. employers must begin using a revised Form I-9 by February 2, 2009. The new form will be available in the coming days on the U.S. Citizenship and Immigration Services website ([www.USCIS.gov](http://www.USCIS.gov)).

What's new? The new I-9 form makes it clear that employers can not accept expired documents as proof of identification or work authorization and reduces the number of acceptable documents that employees can present to show work authorization. An employer who uses the old I-9 form after February 2<sup>nd</sup> is subject to fines.

### Coming up in our next issue: Mental Health Parity Bill

#### BUT DID YOU KNOW?

Congress recently made numerous amendments to the Americans With Disabilities Act ("Act") that became effective on January 1, 2009. In general, these new amendments broaden the potential coverage of the Act and increase protections to individuals with disabilities. If you have any questions or comments regarding the application of the Act, please contact counsel of your choice at Boyle, Pecharich, Cline, Whittington & Stallings, PLLC.

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If you would like to have someone added to our mailing list or want your name removed, please contact Bridget at 928-445-0122