# Leave of Absence—the Family Medical Leave Act

BY ANDREW GOULD, ESQ.

THE U.S. Department of Labor recently issued proposed new regulations to the groundbreaking federal legislation—the Family Medical Leave Act of 1993 (FMLA)—that, if and when finalized and adopted later this year, will impact business practices and employee leave rights across the country.

The FMLA provides millions of employees with certain job-restoration rights in the event a leave of absence from work is necessitated by certain family or health-related situations. Only certain employers are required to provide FMLA rights (i.e., those employing 50 or more individuals), and only certain employees are eligible for protection under the Act (i.e., employees employed for at least one year and who have worked at least 1,250 hours in the prior 12 months). A covered employer must grant an eligible employee up to a total of 12 workweeks of unpaid leave during any 12-month period for one or more of the following reasons:

- for the birth and care of the newborn child of the employee
- for placement with the employee of a son or daughter for adoption or foster care
- to care for an immediate family member (i.e., spouse, child) with a "serious health condition"
- to take medical leave when the employee is unable to work because of a "serious health condition"
- Finally, in certain circumstances, intermittent or reduced schedule leave may be taken when medically necessary.

Simple to state, the law has proven incredibly difficult to apply, even for the most conscientious employer. After many years of promising changes to its regulations, the Department of Labor is finally making good on its promises. The agency's new proposed regulations—which will be published in *The Federal Register* this month—attempt to address some of the most common criticisms employers have about the previously issued final FMLA regulations. The highlights of the new proposed regulations include provisions that:

- provide greater guidance to employers concerning requests for medical certifications, fitness-for-duty certifications, and designations of leave
- clarify the eligibility requirements for employees who are jointly employed
- allow employers to deny bonuses (such as perfect attendance or hours-worked awards) to employees who don't qualify for them because they took FMLA leave
- allow employers to require employees to comply with the terms and conditions of their paid leave policies to substitute paid leave for FMLA leave
- clarify (albeit slightly) the definition of a "serious health condition"

The Department of Labor is also proposing to fix a provision—overturned by the U.S. Supreme Court in 2002—that said employers can't deduct FMLA-qualifying absences from an employee's FMLA leave allotment unless they timely designate the absences under the FMLA.

*This is the first of a series of articles addressing the Family Medical Leave Act (FMLA) and leaves of absence in general.*

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