

THE
Extra Mile
GOING THE EXTRA MILE SO YOU DON'T HAVE TO

Family Medical Leave Act ("FMLA") Amended to Include Leave Related to Military Service-

On January 28, 2008, President Bush signed the National Defense Authorization Act ("NDAA") which, among other things, amends the FMLA to include two new categories of protected leave available to eligible employees with family members serving in the military.

The first category of protected leave, "Active Duty Leave," entitles an eligible employee to a total of 12 workweeks of leave during any 12-month period "because of 'any qualifying exigency' arising out of the fact that the spouse, or a son, daughter or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation."

Eligible employees requesting Ac-

tive Duty Leave must provide notice to the employer as soon as reasonable and practicable, and an employer may require such requests to be supported by a certification issued as the Secretary of Labor may by regulation prescribe. The U.S. Department of Labor ("DOL") has stated that employers are *not* legally required to provide Active Duty Leave to eligible employees until the Secretary of Labor issues regulations defining the meaning of "any qualifying exigency." Notwithstanding the foregoing, the DOL is encouraging employers to provide Active Duty Leave to qualifying employees until the new regulations are issued. The DOL stated that it is "expeditiously preparing" the regulations.

The second new category of leave, "Servicemember Family Leave," provides an eligible employee

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See You in Orlando at NSBA!

As the snow continues unabated in Illinois, our thoughts turn to the warmth and sun of Orlando and the rapidly approaching National School Boards Association Convention.

HLERK will be actively involved at the Convention itself and at the National Council of School Attorneys law seminar. As noted in last month's *The Extra Mile*, **Nancy Krent** will receive the "Distinguished Service" award from the Council of School Attorneys on Friday, March 28th at 8:15 a.m. in the Pacifica Ballroom at the Royal Pacific Hotel, site of the school law seminar.

The previous day, Thursday, March 27th at 3:00 p.m., **Heather Brickman** and **Barbara Erickson** will address the School Law Seminar on school district requirements concerning 403(b) and 409 A plans. Continuing legal education credit is available to all Illinois attorneys attending the program.

At the general convention, **Shayne Aldridge** will present a program on *Responding to Immigration in Our Schools* on Saturday, March 29th at 3:45 p.m.

A variety of HLERK attorneys will also be in attendance at NSBA in Orlando. We look forward to seeing you there!

Reminders/Notes

- It's time to update your student handbooks! Send in the enclosed order form to purchase the HLERK model student handbook checklist or contact Michelle Todd to request a comprehensive review of your student handbooks.
- This is the first school year in which the new RIF/Recall law regarding educational support personnel employees (ESPs) is in effect. The statutory change has a significant impact upon required RIF notices for ESPs this year.
- Please contact Terry Hodges or Ellen Rothenberg with questions.
- Send a record of your Board of Education's minutes to the district's treasurer.
- Register today for the upcoming HLERK/MEDS-PDN programs on Response to Intervention. Dates/locations are on the attached Memorandum.

The Extra Mile is intended solely to provide information to the school community. It is neither legal advice nor a substitute for legal counsel. The Extra Mile is intended as advertising but not as a solicitation of an attorney/client relationship.

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ISBE Accounting Regulation Alert/New Limitation on Interest Transfers--Beginning July 1, 2008, the ISBE Program Accounting Manual (Section 110 of the ISBE regulations) will be replaced by ISBE Regulations on Accounting, Budgeting, Financial Reporting and Auditing as outlined in [new Section 100](#). One little-discussed provision of the new regulations effectively limits the ability of districts to transfer interest earnings on funds by annually re-characterizing such earnings as principal.

Specifically, new Section 100.50(a)(4) states that "Unless otherwise provided by statute or specified by board resolution adopted prior to June 30 of a fiscal year, interest earnings shall be added to and become part of principal as of June 30 of the fiscal year." Pursuant to Section 10-22.44 of the *School Code*, a school district may permanently transfer interest earnings on non-restricted funds to any other fund most in need as determined by the board of education.

The Program Accounting Manual currently in effect does not further limit the transfer of interest otherwise authorized by statute. The ability to transfer interest on many funds is thus broader than the structured avenues for transferring principal, which are available for fewer

funds and frequently require additional procedures such as notice, publication and hearing. Pursuant to the new regulations, however, in order to retain the characterization of funds as interest past the end of a fiscal year, districts may be required to "specify" such retention or the intended transfer by board resolution prior to the end of such fiscal year.

Section 100.50(a)(4) does not clarify how this interest retention or transfer should be specified (or described) or whether repeated annual specification will be required for an ongoing situation such as related to earnings on the proceeds of a bond issue. This important revision must be considered in planning the nature and timing of every school district's yearly fund transfers. Districts should consult with legal counsel to ensure that all interest transfers planned for a subsequent fiscal year are earmarked appropriately prior to the end of the applicable prior fiscal year. The new regulations will require many other changes in financial procedures for school districts. We will highlight a few of these additional changes in forthcoming issues of *The Extra Mile*.

Please contact Heather Brickman with questions regarding the new ISBE Regulations governing accounting.

FMLA Cont. who is the spouse, son, daughter, parent, or next of kin of a covered servicemember to a total of 26 workweeks of leave during a 12-month period to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness."

The term "next of kin" is defined as an individual's "nearest blood relative," and "serious injury or illness" means "an injury or illness incurred in the line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating." This leave is available only during a single 12-month period, and the 26-week entitlement includes any other FMLA leave taken in that period.

By way of example, if an employee has taken three weeks of FMLA leave because of the placement of a child with the employee for adoption, the employee could take up to 23 weeks of leave to care for a covered servicemember. This leave provision is effective immediately.

When administering leave requests under either of these new categories of leave, keep in mind that all of the other requirements, limitations and protections of the FMLA such as the notice requirements, method of taking leave (i.e. intermittent basis or reduced leave schedule), reinstatement to prior position, and health insurance continuation are applicable.

HLEK has amended its model FMLA policy to include these new requirements. You can order a copy by sending in the attached form. Should you have any questions, please contact Cindi DeCola or John DiJohn.

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