



National Association of Letter Carriers

M-01780

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Mary Ziegler

Director of the Division of Regulations, Legislation, and Interpretation
Wage and Hour Division
U.S. Department of Labor
Room S-3510
200 Constitution Ave, N.W.
Washington, D.C. 20210

**Re: Notice of Proposed Rulemaking Concerning the Family Medical Leave Act;
RIN 1235-AA03**

Dear Ms. Ziegler:

National Association of Letter Carriers, AFL-CIO (NALC) submits these comments on the Department's Notice of Proposed Rulemaking (NPR) concerning the Family Medical Leave Act (FMLA) that was published in the Federal Register on February 15, 2012 (Vol. 77, No. 31).

Founded in 1889 and headquartered in Washington D.C., the NALC is a labor union with approximately 275,000 members who are actively employed as letter carriers by the U.S. Postal Service or retired from such employment. NALC is the exclusive bargaining representative of the approximately 190,000 city letter carriers currently employed by the Postal Service. NALC negotiates and administers a nationwide Collective Bargaining Agreement with the Postal Service covering all city letter carrier craft employees. All such employees are covered by the FMLA.

The FMLA is historic, progressive legislation that has bettered the lives of millions of working Americans by allowing them the time off they need to attend to their own serious health problems or care for ill family members – without being penalized at work. By making leave available equally to both men and women, the FMLA has allowed all workers to balance family and workplace responsibilities while maintaining their family's economic security.

I. INTRODUCTION

As a general matter, the NALC strongly supports the DOL's efforts through the NPR to expand the FMLA's military caregiver leave and qualifying exigency leave provisions in order to implement the NDAA (National Defense Authorization Act) for Fiscal Year 2010.

The NALC has a particular interest in the proposed changes because they affect so many of our members. The U.S. Postal Service is the second largest employer of veterans in the Nation. Almost one fourth of the NALC's members are veterans. In addition, letter carriers serve as reservists and in the National Guard at a rate higher than the population at large.

The DOL has invited comments and posed questions in specific sections of the NPR. Below you will find the NALC's comments on four of these sections.

II. Comments

A. A Proposed Eldercare Exigency

The NPR is published in the Federal Register (Vol. 77, No. 31/February 15, 2012). On page 8966 of the Federal Register the Department in its *Section-by-Section Analysis* invites comment as to whether additional qualifying exigencies should be added to the 8 listed in §825.126(a).

A number of our members have indicated that providing and making arrangements for eldercare is as pressing a need for them as childcare is when they face military deployment. Consequently, the NALC proposes adding eldercare provisions to the FMLA as an additional qualifying exigency. The eldercare exigency could be modeled on the childcare exigency that has been carried over from the existing regulation to the proposed rule in that it provides: leave to arrange for alternative eldercare (proposed §825.126(b)(3)(i)); leave to provide eldercare on an urgent immediate need basis (proposed §825.126(b)(3)(ii); leave to enroll in or transfer an elderly parent to a new eldercare facility (proposed §825.126(b)(3)(iii)). Surely, an exigency involving eldercare is not only consistent with but also embodies the remedial intent of both the FMLA and the NDAA.

B. Problems with Initial Certification Requirements for Leave Taken because of a Qualifying Exigency

On page 8970 of the Federal Register the Department in the NPR notes that it has received information from both employers and employees indicating that family members have had difficulties obtaining copies of active duty orders or other sufficient documentation to comply with the certification requirements at §825.309(a) for leave taken because of a qualifying

exigency. The Department in the NPR specifically requests feedback and comments on this issue.

Members of the NALC have experienced problems meeting the initial threshold certification requirement that the covered military member be on covered active duty (foreign deployment) or call to covered active duty. In one instance involving the deployment of a letter carrier's son to Iraq, the son's military unit at Camp Pendleton refused to provide active duty orders or other deployment information that his father needed to take qualifying exigency leave for post-deployment activities. The father even went as far as contacting the Pentagon to find out where the son could get documentation and was told that no documentation would be provided. Apparently, the Military determined that providing the active duty orders involving foreign deployment might compromise the security of the mission. Under current regulations at §825.309(a), the employer reviews the active duty orders or other deployment documentation and determines whether the covered military member meets the initial covered active duty requirement for certifying qualifying exigency leave. Because the son could not obtain the required documentation, the Postal Service denied his father FMLA-protected leave.

In order to avoid such problems, the NALC proposes that the determination be left to the military rather than the employer as to whether or not a covered military member meets the covered active duty requirement for qualifying exigency leave. This could be accomplished in several ways. There could be a standardized form issued by the appropriate branch of the military that simply indicates that the covered military member meets the covered active duty requirement without providing any details about the deployment that might constitute a security risk. Alternatively, the WH-384 or equivalent form might contain a section to be signed by the appropriate military official that would indicate that the military member meets the covered active duty requirement, again without providing further information about the deployment that might constitute a security risk.

Once the military establishes the threshold certification requirement that the covered military member is on covered active duty, the remaining certification requirements for the specific emergencies would be met as currently outlined at §825.309(b)&(d).

C. Current §825.126(a)(1) should be Expanded to 15 days

On page 8965 of the Federal Register, the Department in the NPR asks whether a period of 7 calendar days is sufficient for leave taken for the exigency involving short-notice deployment currently provided for at §825.126(a)(1). Our members have found that 7 days is often inadequate for dealing with all of the arrangements and adjustments they must make to get their affairs in order when faced with short-notice deployment. Because of this the NALC proposes that the definition of short-notice deployment be expanded to 15 days and that the Department correspondingly expand the period of leave for the short-notice deployment exigency from 7 to 15 calendar days.

D. Current §825.126(a)(6) should be Expanded up to 30 days

The NALC supports the Department's proposal in the NPR at page 8966 of the Federal Register to expand the amount of leave currently provided at §825.126(a)(6) that allows an eligible employee to take leave to spend time with a covered military member on rest and recuperation. The Department proposes in the NPR to increase the leave an employee may take for this category of exigency from 5 days to the amount of leave the military has granted to the covered military member up to a maximum of 15 days. The Department also asks in the NPR if 15 days is sufficient. Because recuperation is crucial for the mental, spiritual, and familial well-being of our service men and women and because their need for recuperation can vary tremendously depending on the nature of their deployment, the NALC strongly believes that leave granted for this exigency should be equal to the amount of leave the military has determined to be necessary and has granted for the covered military member up to a maximum of at least 30 days.

III. Conclusion

In sum, the NALC applauds the expansion of FMLA benefits for covered military members found in the NPR. The NALC trusts that the Department will seriously consider the comments and proposals we have offered above in order to help achieve the broad remedial intent of both the NDAA and the FMLA.

Sincerely,



Fredric Rolando
President