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UNIFORMED SERVICE COUNTS TOWARD FMLA THRESHOLDS

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Q: I started a new job with a new employer in May 2001. I am a Coast Guard Reserve officer and ROA member. I was recalled to active duty in September 2001 and released in March 2002, when I returned to my civilian job.

For several years, my wife and I have been trying to adopt a child. Finally, our efforts have met with success. I want to take some time off from work, without pay, to attend to details of the adoption and to bond with our new daughter, arriving from China. My employer is telling me that I am not eligible for unpaid leave for the adoption because I have not worked for the employer long enough and I have not worked enough hours.

I think that this is unfair. I would clearly meet these thresholds if I had not been recalled to active duty. Can you help me?

A: The Family Medical Leave Act (FMLA) (29 U.S.C. 2601-2654) applies to this situation. Under that law, a covered employee is entitled to 12 workweeks of leave (generally unpaid) during a 12-month period because of childbirth, adoption or foster care, or a serious health condition of the employee or certain family members. [See 29 U.S.C. 2612(a).] To be eligible for FMLA leave, you must work for a covered employer (which you do), and you must have worked for that employer for at least 12 months. Moreover, you must have worked at least 1,250 hours for that employer during the 12-month period prior to the start of your FMLA leave.

Good news! The United States Department of Labor (DOL) has recently determined that time spent away from work performing service in the uniformed services must be counted in meeting both the 12-month and the 1,250-hour threshold. I invite your attention to a DOL memorandum dated 22 July 2002. The Solicitor of Labor (Eugene Scalia), the assistant secretary for Veterans' Employment and Training (Frederico Juarbe Jr.), and the administrator of the Wage and Hour Division (Tammy D. McCutcheon) all signed this memorandum.

* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.