

# Firehouse Lawyer

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## **Changes in Military Leave Law Should Lead to Policy Changes**

By Chapter 71 of the Session Laws of 2008 (Senate Bill 6447), the Washington State Legislature modified the military leave law in a few respects. The Legislature changed this paid leave requirement to 21 days annually, instead of only 15. Thus, at this point, all public employers should be sure to allow, between October 1 and September 30 in each year, a total of 21 paid days off to those with military service obligations. Such military leave of absence shall be in addition to any vacation or sick leave to which the employee may be entitled. The military member shall also not have any loss of efficiency rating, pay or benefits, during the leave.

The Legislature, in adopting the Military Family Leave Act of 2008 also added a spousal benefit for the first time. Once this law became effective last month, public employers now have an obligation to allow 15 days of *unpaid leave* to any employee who is the spouse of a military member who has been notified of an impending call or order to active duty or who has been deployed. The entitlement is to 15 days of leave per deployment, either before deployment or during leave from deployment. Please do not get confused—the unpaid leave for spouses is only 15 days, but the paid leave for actual employed military members who get orders has now been raised from 15 days to 21 days per year.

In recent years, due to client requests, I have added to my model SOP on military leave an "enhancement" to the military leave entitlement. During times of war, or when the Board of Commissioners deems necessary, the district will enhance the leave program during "lengthy deployments". On a case-by-case basis, the Board may approve payment of the difference between military salary and the employee's base salary or wages received from the fire district. Special pays and overtime are disregarded. This extra differential pay, designed to "make whole" the employee while they are serving their country on lengthy deployments, is generally limited to one year in length except in extraordinary circumstances. Obviously, very few departments will be able to afford such "recognition of patriotism" policies. I do not expect very many local governments to adopt such a policy, but some have

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expressed interest in doing so.

The other change I have made in the model SOP in recent years relates to the calculation of the annual leave for shift workers, such as firefighters and/or EMTs who work a typical 24-hour shift schedule due to FLSA overtime laws. With respect to these employees, for many years I recommended following an Attorney General opinion regarding the best way to count the "days" of leave. However, a union attorney persuaded me that the AGO is actually incorrect. The revised reasoning, supported by decisions of two other states' appeals courts on the exact same issue, is that the "work day" for shift workers is a 24-hour work day. Our state courts' interpretations of the law, insofar as they address this question, are consistent with the idea that the "work day" is what the statute refers to, and not a calendar day. In essence, I concluded that our appellate courts, if actually presented with a case on this question, would not follow the Attorney General opinion (they are not bound by it) but would instead give the benefit of doubt to the employee, given the remedial purpose of the statute.

Anyone who desires a copy of my newly revised SOP on military leave can obtain a copy by submitting a written request by e-mail to me at [firelaw@comcast.net](mailto:firelaw@comcast.net). As usual, I do not purport to give legal advice in this newsletter, but only educational information to readers, who are urged strongly to consult their own legal counsel prior to implementing any new policies.

## PHOTO-RELEASE POLICY

A recent article in the Journal of Emergency Medical Services (JEMS.com) has prompted me to begin developing a model policy on photo-release. A controversy arose in Florida over digital images of a patient and numerous responders from various agencies, after the images were disseminated broadly without permission. Apparently, the photos, or some of them, depicted the patient in "a stage of undress". In effect, what occurred was that the Fire Chief e-mailed photos to various persons outside the department. Apparently, several different agencies responded to the call, and the chief felt the photos showed excellent and commendable inter-agency cooperation. However, one or more photos depicted the exposed breast of a patient. Apparently, the exposure was so minor or incidental that various viewers looked at the photos and did not see any part of the patient exposed. One reviewer admitted she saw nothing objectionable until the photos were enlarged. Nonetheless, once the media got involved in the story, and the entire matter appeared on the national news, the administrators and elected

officials decided that the photo-snapping Fire Chief must be terminated. An over-reaction perhaps, but it does point up a need for policy.



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Apparently, this is not the first instance of an EMT or fire service personnel being terminated for taking photos on scene. Clearly, while such photographs may have educational or training value for a department, there needs to be great care taken in (1) ensuring that patient privacy and dignity are respected in the first instance and (2) limiting dissemination of the photos to those who "need to know" the information depicted, from a professional standpoint. It seems to me that if dissemination is restricted only to those on the call, for example, and the photos used for QA or other sorts of "training" or "peer review", then such problems could not arise at all, even if the photos do show nakedness. After all, such photos depict reality and if the patient has no knowledge that the photos are being used solely in a professional manner for education of responders, where is the harm or injury? The widespread dissemination, therefore, *is* the big problem. Of course, an extreme and rare case could occur where photos are used only internally, but to further some prurient or voyeuristic interest of an individual. In

such a rare case, discipline would be necessary and appropriate.

As stated above, I have just begun to develop a model policy to address the privacy interests of patients and other members of the public. The policy will only be effective, however, if all volunteer and career personnel are thoroughly trained and reminded periodically of the department's policy, once adopted.

## NOTICE OF CHANGE OF ADDRESS

I know that some of my contacts or correspondents will not "get the word" about all of my recent changes, as for example I cannot send a notice to every attorney in the state I might deal with occasionally. Therefore, I am including herein a notice of change of address, which will provide readers with all of my new contact information. As mentioned last month in these pages, I moved my office in June to the Headquarters of Gig Harbor Fire and Medic One, a very good long-time client of mine.

The Headquarters building is located at 10222 Bujacich Rd. N.W., which is near the Burnham Drive exit from S.R. 16, a bit west of Gig Harbor. I often tell people it is "just down the road" from the Purdy Women's Prison, so look for the sign that warns against picking up hitchhikers! Feel free to stop in for a visit (call first) but make sure that you do NOT use the above as a mailing address for me—use the P.O. Box, which is also new.

Here's the Notice:

## NOTICE OF CHANGE OF ADDRESS EFFECTIVE JULY 15, 2008

Please be advised that I have relocated my office. The contact information, including new mailing address, telephone and fax numbers, and e-mail address (almost all are new!) is shown above in the letterhead.

Oh...here is how the letterhead looks now:

Joseph F. Quinn, P.S.

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## IT IS SUMMER TIME – TAKE A BREAK

After a good deal of soul searching (well, at least a few moments) I decided to post a very short *Firehouse Lawyer* this month. Please enjoy a safe and sane summer. Look forward to reading a full newsletter edition next month.

## DISCLAIMER

The Firehouse Lawyer newsletter is published for educational purposes only. Nothing herein shall create an attorney-client relationship between Joseph F. Quinn and the reader. Those needing legal advice are urged to contact an attorney licensed to practice in their jurisdiction of residence.