

SPECIAL BULLETIN

November 6, 2009

President Obama Signs Legislation Expanding Family and Medical Leave for Military Family Members

On October 28, 2009, President Obama signed the Fiscal Year 2010 National Defense Authorization Act (NDAA 2010) into law. NDAA 2010 contains provisions amending the Family and Medical Leave Act's (FMLA) military family leave entitlements. The new law takes effect immediately.

In 2008 Congress expanded the FMLA to provide leave for military families. Specifically, the law set forth two types of military-related leave: qualifying exigency leave and military caregiver leave. In January of this year regulations took effect that implemented the 2008 provisions. NDAA 2010 expands FMLA-related military leave and will itself require new regulations.

Exigency Leave

Under the previous law, employees were entitled to take up to 12 weeks of "exigency leave" in a 12-month period when a parent, child, or spouse in the National Guard or Reserves was called to active duty in support of a contingency operation. Exigency leave allowed employees time off for reasons related to their family member's call to active duty. Now, exigency leave is also available to employees who have family members serving in the regular Armed Forces. Moreover, the deployment no longer has to be in support of a contingency operation. Any member of the Armed Forces (including the National Guard and Reserves) who is deployed by the military to a foreign country is covered.

Caregiver Leave

When Congress amended the FMLA in 2008, it added language permitting the parent, child, spouse, or next of kin of an injured military servicemember to take up to 26 weeks of leave in a 12-month period. The new law extends the ability of an employee to take this leave to care for a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness. The veteran must have been a member of the Armed Forces (including the National Guard or Reserves) at any time within five (5) years preceding his or her treatment for the serious injury or illness. Under the new statute, an employee may also take this leave to care for an active servicemember or veteran who had a pre-existing injury that is aggravated while on active duty.

NDAA 2010 authorizes further regulations to implement the new law. We will likely not know for some time exactly how to interpret the additional FMLA provisions. For example, the regulations should define which injuries or illnesses will qualify for leave to care for a veteran.

In the meantime, employers should act in good faith when responding to a request for this new leave and seek legal counsel where appropriate. Supervisors and managers who advise employees about FMLA leave should be made familiar with the new statute as well. Finally, existing policies should be updated to reflect the changes in the FMLA-related military leave.

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*If you have questions about this issue, please contact our
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