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February 1, 2008

EMPLOYMENT LAW

NEWSLETTER OF THE EMPLOYMENT & LABOR PRACTICE GROUP OF MANATT, PHELPS & PHILLIPS, LLP

Breaking News: New Law More Than Doubles Leave Available Under FMLA For Employees Caring For Family Members Injured While On Military Duty

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After a previous veto, on January 28, 2008, President Bush signed into law the 2008 National Defense Authorization Act ("NDAA"), which includes two major amendments to the Family and Medical Leave Act of 1993 ("FMLA") as it pertains to leave available for employees caring for injured family members of the U.S. Armed Forces. First, the NDAA amends the FMLA to allow employees up to 26 weeks of leave to care for family members injured while on active duty in the U.S. Armed Forces. Second, the NDAA amends the FMLA to entitle an employee up to 12 weeks of leave under certain circumstances, without reference to medical condition or injury, where an immediate family member is on duty or called to duty in the U.S. Armed Forces.

Currently, the FMLA allows qualifying employees up to 12 weeks of unpaid leave in any 12-month period to care for their own serious health condition or that of a spouse, child or parent. The first amendment more than doubles the available leave to 26 weeks as applied to employees caring for a family member injured while on active duty *and* expands the coverage beyond care of a spouse, child or parent to include care where the employee is "the nearest blood relative of the individual."

Additionally, the NDAA makes eligible a new category of employee entitled to up to 12 weeks of unpaid leave because of any "qualifying exigency" arising out of the fact that the spouse, child or parent of the employee is on active duty or has been called to active duty. Consistent with existing FMLA

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categories, this category only applies to the spouse, child or parent of the employee. Unlike existing FMLA categories, however, this category may apply to situations unrelated to the care of family members with medical conditions depending on how the regulations define “qualifying exigency.”

The U.S. Department of Labor (“DOL”) is currently preparing regulations to implement the changes to the FMLA. Until the regulations go into effect, the DOL has announced that it will require employers to act in “good faith” to provide the leave described in the new law.

Some states, including California, have also made recent changes to their own family military leave laws to expand the available leave for qualifying employees related to members of the U.S. Armed Forces. For example, California passed Assembly Bill 392 as an “urgency statute” in October of 2007, which allows 10 days of unpaid leave for an employee who is the spouse of a member of the U.S. Armed Forces when the employee’s spouse is home on leave.

In light of the recent FMLA amendments and the enactment of California Assembly Bill 392, employers should amend their leave policies and notify employees of these changes.

Click [here](#) to view the full text of the changes to the FMLA.

Click [here](#) to view the full text of AB 392.

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