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Legal Updates

Significant New Expansions of the Federal Family and Medical Leave Act

February 2008

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All employers subject to the federal Family and Medical Leave Act (“FMLA”) should be aware of the new amendments to the FMLA, which have created significant new leave entitlements for the families of certain military servicemembers. These amendments apply to all employers with fifty or more employees in the United States (including its Territories and possessions). All employers subject to the FMLA will need to update their policies accordingly, and be prepared to address employee questions about these new leave entitlements.

These amendments were implemented through the National Defense Authorization Act (“NDAA”), which created two new types of FMLA leave: Servicemember Family Leave and Exigency Leave. While Morrison & Foerster will soon publish a more detailed Employment Law Commentary^[1] on these new requirements, this alert provides a quick summary of the key requirements:

Servicemember Family Leave. *Effective immediately*, employees eligible for leave under FMLA^[2] are entitled to up to 26 weeks of unpaid leave in a single 12-month period for the care of a spouse, son, daughter, parent or next of kin who is a member of the Armed Forces, including a member of the National Guard or Reserves, and who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.^[3] Servicemember Family Leave can be taken intermittently or on a reduced schedule when medically necessary.

Employees taking Servicemember Family Leave in combination with other FMLA-covered leaves (e.g., bonding leave or leave for employee’s own serious health condition) are entitled to only a maximum combined total of 26 weeks in a single 12-month period. Additionally, where a husband and wife are both employed by the same employer and both wish to take Servicemember Family Leave, the husband and wife are limited to a maximum combined total of 26 weeks of leave. Employers are permitted to require medical certification of the qualifying serious injury or illness. Pending further regulatory guidance by the Department of Labor, other FMLA procedures, e.g., notice periods, should be applied to Servicemember Family Leave as appropriate.

Exigency Leave. The NDAA additionally created an entitlement for eligible employees to take up to 12 weeks of unpaid leave in a 12-month period to attend to “any qualifying exigency” arising out of the fact that a spouse, son, daughter, or parent is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.^[4] Employees taking Exigency Leave in combination with bonding leave or leave for the employee’s own or a qualifying family member’s serious health condition are entitled to only a maximum combined total of 12 weeks in any 12-month period. Exigency Leave can be taken intermittently or on a reduced schedule. This provision of the amendments is not currently effective and will not become effective until the Department of Labor issues final regulations defining “any qualifying exigency.”

More detailed information will be provided in our forthcoming Employment Law Commentary. In the interim, any questions may be directed to the author or to the other members of the firm’s [Employment and Labor Group](#).

[1] This forthcoming client alert will be available on our firm's website at <http://www.mofo.com/practice/practice/employment/overview/news.html>.

[2] Employees are only eligible to take FMLA leave if (a) they have worked for the covered employer for at least twelve months prior to the date the leave is to commence; (b) they have worked at least 1,250 hours in the twelve months preceding the leave; and (c) they work at a location where the covered employer employs 50 or more employees within a 75-mile radius.

[3] A "serious injury or illness" is one incurred by a member of the Armed Forces in the line of duty on active duty that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating.

[4] A contingency operation is defined as a military operation that (a) is designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or (b) results in the call or order to, or retention on, active duty of members of the uniformed services under certain provisions of law during a war or during a national emergency declared by the President or Congress.