

Congress Amends the FMLA To Provide Additional Family Military Leave

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Last week, President Obama signed into law the National Defense Authorization Act of 2010 ("the Act"), which, among other provisions, expands the two categories of family military leave under the Family and Medical Leave Act ("FMLA"), exigency leave and servicemember caregiver leave. These two categories of leave were added to the FMLA in 2008.

Under the FMLA, eligible employees may take leave for a qualifying exigency leave to manage family affairs when the employee's spouse, child or parent is on active duty or is called to active duty. Qualifying exigencies include preparing for a short-notice deployment, dealing with financial, childcare or school activities associated with the deployment, attending counseling or post-deployment activities, and other similar activities. Prior to the recent amendment, this leave was limited to members of the National Guard or the Reserves. However, the Act extends this to any member of the Armed Forces who is on active duty in a foreign country or is called to active duty in a foreign country.

The Act also expands servicemember caregiver leave. The FMLA provides eligible employees up to 26 of weeks leave to care for a current member of the Armed Forces, National Guard or the Reserves who has a serious illness or injury that was incurred in the line of duty while on active duty. The new amendment extends this to veterans who are undergoing medical treatment, recuperation or therapy for a serious illness or injury that was incurred in the line of duty, and who were members of the Armed Forces, National Guard or Reserves at any time in the past five years. Further, the Act clarifies that a serious injury or illness includes one that existed prior to a servicemember's active duty but which was aggravated in the line of duty. With respect to veterans, the injury or illness may manifest itself either before or after the servicemember became a veteran.

Employers will need to revise their existing leave policies to reflect these changes. However, it is unclear whether the amendments took effect immediately or will take effect when the Department of Labor issues regulations relating to the changes. We will alert you when the regulations are available and when the DOL issues new FMLA forms and notices in light of the amendments.