

Employment, Labor and Benefits Alert: Recent Law Expands FMLA Coverage Relating to Military Caregiver Leave and Qualifying Exigencies

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President Obama recently signed into law the “National Defense Authorization Act for Fiscal Year 2010” (the Act). The Act was designed to expand Family and Medical Leave Act (FMLA) coverage in certain situations pertaining to military caregiver leave and exigency leave. More particularly, the Act expands FMLA coverage in three important ways:

1. **Expansion of Time Period for an Injury or Illness to Support Military Caregiver Leave.** The Act permits a covered family member of a veteran undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty to take caregiver leave **if** the veteran was a member of the military within **five years** of receiving such treatment. In other words, if a veteran seeks medical treatment for a serious service-related injury or illness within five years of serving in the military, a covered family member can take up to 26 weeks of FMLA leave to care for him or her. The Department of Labor’s (DOL’s) press release indicated that this expansion was designed to permit coverage for injuries or illnesses, such as post-traumatic stress disorder, which “may not manifest themselves until after a service member has left the military.”
2. **Expansion of Definition of “Injury or Illness” to Include Pre-Existing Injuries.** The Act modifies the definition of “injury or illness,” for purposes of military caregiver leave, to now include the aggravation of existing or pre-existing injuries. Accordingly, covered employees now may take up to 26 weeks of FMLA leave to care for a service member who had a pre-existing injury or illness that was aggravated in the line of military duty.
3. **New Definition of Covered Active Duty.** The Act allows family members of **all** covered active duty military personnel deployed abroad—rather than only Reserve and National Guard members, as previously provided by the FMLA—to take advantage of qualifying exigency leave. Notably, the basis for the exigency leave itself remains the same (for instance, leave to prepare for short notice deployment, to arrange for child care, to update financial or legal arrangements, to attend counseling, for rest and recuperation, and for post-deployment activities).

The Act requires the DOL to work with the Secretaries of Defense and Veterans’ Affairs to draft new regulations consistent with these expanded military leave rights. We will issue a new advisory to our clients when such regulations are issued, and if/when the DOL publishes new FMLA forms incorporating references to these expanded military leave rights.

In the meantime, we recommend that our clients update their policies and practices to ensure compliance with these amendments, and conduct appropriate training for managers and supervisors to ensure that they implement the revised policies and practices in a lawful manner.

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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