



New Law Amends FMLA Regarding Military Service

Employment Law Update - February 2008

February 5, 2008

On January 28, 2008, President Bush signed into law The National Defense Authorization Act (“NDAA”) for 2008. This new law amends the Family and Medical Leave Act to permit a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, 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.” The covered “serious injury or illness” is one that was incurred in the line of duty while on active duty. “Next of kin” is the nearest blood relative of the injured/sick service member. The effective date of this new leave entitlement is January 28, 2008, the date President Bush signed it into law.

In addition to the new leave entitlement, the 2008 FMLA amendment also provides for an expansion of FMLA leave entitlement, permitting an employee to take FMLA leave for “any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee 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.” This provision of the NDAA will not become effective until the Department of Labor issues its regulations defining “any qualifying exigency.”

In summary, the 2008 NDAA amendment to the FMLA expands an employee’s FMLA entitlement as follows:

- By giving the employee up to 26 workweeks because a listed military family member has a serious injury or illness incurred in the line of duty while on active duty — this provision is effective now.
- By expanding FMLA leave entitlement — i.e. the 12 workweeks — to cover dislocations and the like caused by a call to active duty — this provision is awaiting the USDOL’s regulation before it becomes effective.

Please contact any of the members of the McAfee & Taft [Labor and Employment Group](#) if you have any questions regarding the changes to FMLA or regarding any labor and employment law

matters.

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