



Legal Alert: DOL Addresses Effective Date of New FMLA Requirements

1/31/2008

The Department of Labor (DOL) has published an information page regarding the recent amendment to the Family and Medical Leave Act (FMLA) contained in the Defense Authorization Act for 2008 (NDAA). As discussed in our prior Alert, on January 28, 2008, the President signed the NDAA which, among other things, amended the FMLA to give the “spouse, son, daughter, parent, or next of kin” of a member of the Armed Forces up to 26 weeks of leave to care for the service member “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.”

According to the DOL, this provision was effective January 28, the date the President signed the legislation. The agency states that it is working “quickly” to prepare guidance regarding rights and responsibilities under this legislation. In the meantime, employers are required to act in good faith in providing leave under the new legislation. Generally, employers should use FMLA-type procedures (such as substitution of paid leave and notice) as may be appropriate.

The NDAA also permits 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.” The DOL information page states that this provision, by its terms, is not effective until the Secretary of Labor issues final regulations defining “qualifying exigency.” The DOL is “expeditiously preparing such regulations” and, in the interim, urges employers to provide this type of leave to employees.

Employers’ Bottom Line:

Employers should be aware of the expansion of their obligations under the FMLA and should revise their FMLA policies and procedures to include leave as provided in the NDAA amendments. While the DOL has provided a brief reprieve from the “exigency” requirement, the agency likely will issue a definition shortly.

If you have any questions regarding the FMLA, revisions to your policies or procedures, or any other employment related issue, please contact the Ford & Harrison attorney with whom you usually work or John Lowrie, jlowrie@fordharrison.com, 303-592-8866 or Doug Hall, dhall@fordharrison.com, 202-719-2065.