

Service

Labor & Employment

FMLA Changes Now and On the Horizon

On January 28, President Bush signed into law the National Defense Authorization Act (NDAA). Of critical importance to employers, the NDAA amends the Family and Medical Leave Act (FMLA) in two significant respects.

First, the NDAA amends the FMLA to provide for "Servicemember Family Leave," allowing up to 26 workweeks of leave to care for a member of the armed forces "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." This leave is available not only to a spouse, son, daughter or parent, but to the service member's "next of kin." The NDAA defines "serious injury or illness" as one that was incurred while on active duty "that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating." The NDAA contains additional language concerning, among other things, coordination of this Servicemember Family Leave with other types of FMLA leave. While the Department of Labor has not yet issued guidance on this new leave right, the right to Servicemember Family Leave is effective immediately.

Second, the NDAA amends the FMLA to allow leave for "any qualifying exigency," as defined by the secretary of labor, arising out of active duty or an impending call or order to active duty to the armed forces "in support of a contingency operation." This provision of the NDAA is not effective until the secretary of labor issues regulations.

Employers should also be alert to upcoming changes in FMLA regulations. The Department of Labor will shortly be publishing proposed amendments to a number of regulations. The anticipated changes include modifications to the certification process and the definition of a serious health condition.

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