

Service

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New Legislation Expands FMLA Military Leave

On October 28, 2009, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2010 (FY 2010 NDAA). The new law amends the Family and Medical Leave Act (FMLA) provisions applicable to military personnel and their families by expanding the availability of both qualifying exigency leave and military caregiver leave.

Qualifying Exigency Leave

Under the FMLA, employees may take up to 12 weeks of leave during a 12-month period for any “qualifying exigency” arising out of the fact that a spouse, child or parent of the employee is on active duty (or has been notified of an impending call or order to active duty). The regulations define “qualifying exigencies” to include the following eight items (with various caveats):

1. short-notice deployment
2. military events and related activities
3. childcare and school activities
4. financial and legal arrangements
5. counseling
6. rest and recuperation
7. post-deployment activities

8. “additional activities” not addressed in the other categories, provided that both the employer and the employee agree to the timing and duration of such leave

Previously, qualifying exigency leave was not available to family of active members of the Armed Forces, but only to family members of those in the National Guard or Reserves who are deployed in support of a contingency operation. The FY 2010 NDAA extends the availability of qualifying exigency leave to family members of both career service members *and* those in the National Guard or Reserves who are deployed to a foreign country.

Military Caregiver Leave

In addition to qualifying exigency leave, the FMLA provides up to 26 weeks of FMLA leave during a 12-month period for spouses, children, parents or next of kin to care for current members of the Armed Forces, including members of the National Guard or Reserves, who are undergoing medical treatment, recuperation or therapy, or are otherwise on the temporary disability retired list for a serious injury or illness incurred in line of duty.

The FY 2010 NDAA extends this entitlement to family members of veterans of the Armed Forces, including the National Guard or Reserves, suffering from a service-related injury or illness if the veteran was an active member of the Armed Forces within five years of requiring care. Presumably, this extension is intended to assist veterans who sustain injuries or illnesses during active duty that are not immediately apparent, such as Post-Traumatic Stress Disorder.

Additionally, the FY 2010 NDAA expands military caregiver leave to cover the care of members of the Armed Forces who have an existing or preexisting serious injury or illness incurred in the line of duty that is aggravated by active duty. This expansion will likely allow for family members to take multiple 26-week periods of leave related to the same injury or illness of a covered service member if the injury or illness is first sustained in the line of duty and then aggravated during a return to active duty.

What This Means to You

While the FY 2010 NDAA does not contain an effective date, employers should consider the law to be effective immediately. Employers should be alert to upcoming changes in the regulations and should update all FMLA policies to reflect the changes associated with the FY 2010 NDAA.

Contact Info

If you have any questions about this or any other labor & employment matters, please contact your Husch Blackwell Sanders attorney.

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