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New Law Expands FMLA Coverage for Military Families

On October 28, 2009, President Barack Obama signed into law a bill that expands the coverage of “qualifying exigency leave” and “military caregiver leave” under the Family and Medical Leave Act (“FMLA”). The new law, the National Defense Act for Fiscal Year 2010 (H.R. 2647), is already in effect. The new law builds on the 2008 amendments that gave new FMLA rights to military families.

Expansion of “Qualifying Exigency Leave”

Under the 2008 amendments to the FMLA, up to 12 weeks of “exigency leave” became available to eligible employees whose family members are in the Reserves or National Guard when the family member was called to active duty “in support of a contingency operation.” A “qualifying exigency” allows leave for activities such as short-term deployment, military events and related activities, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, and post-deployment activities.

The new law expands this leave entitlement in two important ways. First, it extends coverage for exigency leave to employees whose family members are in a *regular component* of the Armed Forces. Previously, such leave was available only when a family member was called to active duty in the National Guard or military reserves.

Second, the new law replaces the current requirement that the military family member be called to active duty “in support of a contingency operation.” Instead, the new law provides leave to employees of military family members who are on covered active duty. “Covered active duty” means duty during deployment to a foreign country for military members of a regular component. For members of a reserve component, “covered active duty” means “duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty.”

Expansion of “Military Caregiver Leave”

Under the 2008 amendments, up to 26 weeks of FMLA leave became available for employees to care for a military family member who incurred a “serious injury or illness” in the line of duty on active duty.

The new law also expands coverage of the “military caregiver leave” in two significant ways. The first expansion, and perhaps most significant, is that the law expands coverage to veterans undergoing treatment for a serious illness or injury incurred on active duty for *up to five years* after their separation from military service. Previously, military caregiver leave was available only to care for injured family members who are still in the military.

Second, military caregiver leave will also be allowed when the family member suffered from a *preexisting* serious injury or illness that was aggravated by his or her active duty service in the military.

Implications for Employers

These significant expansions provide FMLA entitlements to a much larger pool of employees, particularly for employers located near military bases. With military leave law compliance at the forefront, Venable urges all employers that are covered by the FMLA to review and revise their FMLA policies to ensure that they are in compliance with these new requirements.

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