



Signing of NDAA Amends FMLA and Permits Leave for Soldiers' Family Members

February 1, 2008

On January 28, 2008, the National Defense Authorization Act for FY 2008 was signed into law. This law amends the Family and Medical Leave Act ("FMLA") regulations to permit up to 26 weeks of work leave by a "spouse, son, daughter, parent, or next of kin" to provide 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 new amendments also allow employees to take FMLA leave "for any qualifying exigency... 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."

Immediate and Future Impact for Employers

The first FMLA amendment, allowing for 26 weeks of leave to care for an ill or injured Armed Forces family member, became effective on January 28, 2008. Though the Department of Labor has yet to draft guidance documents pertaining to this amendment, employers are bound by its requirements and are being asked to "act in good faith" in granting leave to qualifying employees. It should be noted that, because this amendment is part of the FMLA, provisions that employers may already have in place, such as those concerning substitution of time off and paid leave, may be applied to the leave granted by this amendment.

The second FMLA amendment, granting FMLA leave in the case of a call or impending call to active duty, has not yet taken effect. The Department of Labor is currently drafting final regulations for implementation of this amendment. Employers will be required to comply with the amendment when the regulations are published. In the interim, the Department is encouraging employers to grant employee requests for FMLA leave based on calls to active duty.

What This Means for You as an Employer

Employers must begin complying with the first amendment, granting leave to care for ill or injured soldiers, immediately. They should also be prepared to comply with the second amendment, allowing leave for calls to active duty, when written regulations for that amendment are published. It is important that employers discuss the impact of these amendments with their HR directors or other administrators responsible for granting FMLA leave, and work to develop a plan for granting leave to employees who request it under these new amendments.

We want you to be as informed as possible about this issue, and what it means for you as an employer. If you have questions about this or any other issue, please do not hesitate to contact us.

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