



Here We Go Again...Congress has Expanded the FMLA Yet Another Time

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For the second time in the last year, Congress has expanded the scope of the Family Medical Leave Act (FMLA). On October 28, 2009, President Obama signed the Fiscal Year 2010 National Defense Authorization Act (NDAA) into law. This revision of the FMLA further expanded the military family leave entitlements. Less than a year ago, the Department of Labor issued regulations implementing and clarifying new forms of military-related FMLA leave. Now, Congress has expanded the scope of these provisions. The NDAA extends eligibility for "qualifying exigencies" and military caregiver leave. The House approved the Act in a 281-146 vote, and the Senate voted 68 to 29 to pass it. Although this portion of the NDAA did not have an effective date, the staff of the Subcommittee on Military Personnel of the House Armed Services Committee has indicated that it took effect when the President signed it.

Expanding on the 2008 legislation, this law now extends the military caregiver leave provision to veterans. Previously, military caregiver leave was only available to care for current members of the Armed Forces, Guard or Reserves. Caregiver leave provides eligible employees, who are the spouse, son, daughter, parent or next of kin of covered servicemembers in the Armed Forces, with 26 workweeks of leave during a 12-month period to care for a family member who, because of a serious injury or illness that was incurred or aggravated while on active duty, is undergoing medical treatment, recuperation, or therapy, otherwise in outpatient status, or is otherwise on the temporary disability retired list. This leave is available to care for a veteran for up to 5 years after he or she leaves military service, even if the injury did not manifest itself until the servicemember became a veteran. Furthermore, it permits the leave for serious injuries or illnesses that are the result of pre-existing conditions that were aggravated by service while on active duty.

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The Department of Labor's FMLA regulations relating to qualifying exigency leave also previously limited access to the leave to Reserve and National Guard members only. The newly enacted law extends the 12 weeks of exigency leave to cover active duty members in the regular service as well. Qualified Exigency Leave is now available when a family member of an eligible employee who is in the regular armed forces is deployed to a foreign country. Qualifying exigency leave includes: short-notice deployment; military events and related activities; child care and school activities; financial and legal arrangements; counseling, rest and recuperation; post-deployment activities; and any other event the employer and employee agree is a qualifying exigency.

So, employers need to amend their FMLA policies yet again to reflect these expanded military family leave rights. And it may not be over yet. President Obama proposed during his campaign for the Presidency to expand the FMLA to include employers with as few as 25 employees (the current threshold is 50) and to encourage states to adopt paid-leave systems, in addition to including leave for elder care, 24 hours of leave annually for parents to participate in children's academic activities, provisions relating to domestic violence and assault, and expanding the care provisions to individuals who reside in an employee's home for six months or more. Hold onto your hats. We'll keep you posted.

