

Time to Amend Your FMLA Policies Again

New Law Expands Coverage of FMLA's Military Leave Provisions

November 16, 2009

On October 28, 2009, President Obama signed into law a military spending bill for 2010 that included amendments to the FMLA that may permit more eligible employees to take military-related "qualifying exigencies" or "caregiver" leave.

Under the regulations which went into effect in January 2009, protected leave for eligible employees who face "qualifying exigencies" due to a spouse, child, or parent's being called to active military duty had been limited to situations involving those family members serving in the National Guard and Reserves. The new law expands "qualifying exigency leave" to also apply to eligible employees whose spouse, child, or parent is an active duty member of the armed forces.

Also under the current regulations, eligible employees may take protected leave to care for a spouse, child, parent, or next-of-kin in active military service with a serious injury or illness incurred in the line of duty. The new law expands this so-called "military caregiver leave" to include eligible employees whose covered family members are veterans undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred or aggravated in the line of duty, so long as the veteran was an active service member at any time during the five years preceding the treatment, recuperation, or therapy.

Congress also instructed the U.S. Department of Labor to work with the Secretaries of Defense and Veterans Affairs before formulating new regulations. The law is unclear, however, whether the new amendments take effect immediately, on January 1, 2010, upon adoption of new regulations, or some other date. When the FMLA was previously amended through a defense spending bill, those amendments which are arguably self-explanatory went into effect immediately, with a delay only as to "qualifying exigencies" because the term had never previously been defined. Miller Canfield will keep you apprised of any new developments in that regard.

In the meantime, employers should amend their handbooks and policies to reflect the expanded definitions of covered family members for the military-related FMLA leave categories.

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