

PUBLICATION

President Bush Signs Law Expanding FMLA Rights For Military Families

February 01, 2008

On January 28, 2008, President Bush signed into law the "Support for Injured Servicemembers Act," which amends the Family and Medical Leave Act (FMLA) in several important respects for military families.

In particular, the amendments include two new leave entitlements for eligible employees of FMLA-covered employers:

1. Active duty leave - An eligible employee is entitled to 12 weeks of leave during any 12-month period because of a "qualifying exigency" arising out of the employee's spouse, son, daughter or parent being on active duty or having been called to active duty in the Armed Forces; and
2. Injured service member leave - An eligible employee is entitled to up to 26 weeks of leave in a single 12-month period to care for a spouse, son, daughter, parent or "next of kin" who is a member of the Armed Forces and who is undergoing medical treatment or who is medically unfit to perform military duties due to an injury or illness incurred while on active duty.

Regarding active duty leave, there is currently no guidance on what constitutes a "qualifying exigency" although the amendments direct the Secretary of Labor to issue regulations defining this phrase. In the meantime, employers should tread carefully in determining what qualifies as an "exigency." If an employee is seeking active duty leave, the employee must give the employer as much notice as is "reasonable and practicable." The amendments also contemplate that the Secretary of Labor will issue regulations requiring that the employee provide certification to support the need for active duty leave.

Employees requesting leave to care for a wounded family service member may take the leave intermittently but must use the entire 26 weeks of leave within a single 12-month period (i.e., the right to this leave does not renew with each 12-month period). Also, the amendments dealing with injured service members refer for the first time to "next of kin" (as opposed to immediate family members) as an additional category of eligibility. "Next of kin" is defined as the nearest blood relative. An employer may require that the employee provide certification from a health care provider to support the need for injured service member leave.

Employers that are covered by the FMLA are required to comply immediately with the new amendments. Accordingly, we recommend that you inform your employees of their rights under these amendments and update your FMLA policies. It should be remembered that employees who enlist or are called up for military service are already entitled to leave from their jobs and reinstatement under the federal Uniformed Services Employment and Reemployment Rights Act ("USERRA").