

FMLA Amended to Support Servicemembers

Since 1993, eligible employees of covered employers have been entitled under the Family and Medical Leave Act (FMLA) to up to 12 weeks of unpaid leave per year based on medical or family reasons. Medical reasons include the employee's own serious health conditions making him/her unable to work, as well as the need for the employee to care for an immediate family member (spouse, child or parent) who suffers from a serious health condition. Family reasons include an employee having a child born into his/her family and the placement of a child in the employee's home for adoption or foster care.

On January 28, 2008, President Bush signed into law a defense authorization bill that amended the FMLA to create two new categories of FMLA leave. First, eligible employees are now entitled to up to 12 weeks of FMLA leave during any 12-month period based upon a "qualifying exigency." This event occurs when a spouse, 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. Second, eligible employees who are the spouse, son, daughter, parent, or next of kin of an injured servicemember are entitled to up to 26 weeks of FMLA leave more fully defining that term. The provision regarding FMLA leave for the purpose of caring for an injured servicemember takes effect immediately without waiting for the DOL to issue implementing regulations. Employers have been advised to act in good faith in the absence of those regulations.

Any supervisor receiving a request for leave to take care of an injured servicemember should immediately contact Human Resources, which will coordinate with the Office of Counsel in providing appropriate advice regarding whether the request falls within the scope of this new legislation.