

President Signs Expansion of FMLA Coverage for Military Families

On October 28, 2009, the President signed the 2010 National Defense Authorization Act (NDAA) that included provisions expanding Family and Medical Leave Act military family leave benefits. The 2010 NDAA extends FMLA exigency leave coverage to family members of active duty members of the Armed Forces. It also expands the potential period during which FMLA caregiver leave might be provided. Now, eligible employees may take FMLA caregiver leave for up to five years after the veteran ends active duty. The expanded FMLA rights are effective immediately. Employers should amend their FMLA policies to reflect these expanded military family leave rights.

FMLA coverage for military families was first extended in 2008. (See our article, [FMLA Amendments Extend Leave to Families of Servicemembers](#).) Under the 2008 expansion of the FMLA, family members of members of the Reserves or National Guard called to active duty were entitled to leave for qualifying exigencies. Qualifying exigencies were further defined in regulations from the Department of Labor that became effective earlier this year. (See our article, [Long Awaited FMLA Regulations Released](#).) The DOL defined this term to include the following eight situations:

1. short-notice deployment,
2. military events and related activities,
3. childcare and school activities,
4. financial and legal arrangements,
5. counseling,
6. rest and recuperation,
7. post-deployment activities, and
8. additional activities to address other events which arise out of the covered military member's active duty or call to active duty status, provided the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.

Under the 2010 NDAA, family members of active duty members of the Armed Forces would be entitled to FMLA exigency leave under the same circumstances as family members of members of the Reserves or National Guard.

In the 2008 FMLA Amendments, covered family members were eligible for 26 weeks leave to care for injured servicemembers. As a practical matter, those amendments failed to address employees' need to take leave to care for a veteran whose service-connected injury or illness first manifested itself after the servicemember became a veteran. Covered family members are now eligible for 26 weeks of leave to

care for veterans who are undergoing medical treatment, recuperation or therapy for a serious injury or illness and who were members of the Armed Forces (including members of the National Guard or Reserves) at any time during the five years preceding the date of treatment, recuperation or therapy.

In addition to protection for military families under the FMLA, nine states (California, Connecticut, Illinois, Indiana, Maine, Minnesota, Nebraska, New York and Oregon) have passed state family military leave laws which are somewhat different than the new federal law. (See our articles, [Growing Number of States Passing Family Military Leave Acts](#) and [California Adopts Time Off Requirement for Military Spouses](#).) Employers in those states should be familiar with both federal and state laws.