



Defense Authorization Bill Expands Military Provisions of FMLA

President Obama recently signed the National Defense Authorization Act for Fiscal Year 2010 (H.R. 2647) into law. Among other things, the law expands provisions of the federal Family and Medical Leave Act that guarantee job-protected leave for employees who are family members of certain military personnel.

Background

In January 2008, the Family and Medical Leave Act (FMLA) was amended to create two new categories of job-protected leave for employees relating to a family member's military service. (See our January 31, 2008 [For Your Information](#).) Effective January 28, 2008, a covered employer was required to allow an employee who is the spouse, child, parent or next of kin of a military servicemember seriously injured in the line of duty to take up to 26 weeks of job-protected leave during a single 12-month period.

The amendments also created a new category of FMLA entitlement requiring an employer to provide leave of up to 12 weeks in a 12-month period for any "qualifying exigency" connected with the call up to active duty of an employee's spouse, child or parent in support of a "contingency operation." This new entitlement went into effect January 16, 2009 when final regulations defining qualifying exigency were issued. (See our January 15, 2009 [For Your Information](#).)

Expanded Military Family Leave Provisions

President Obama has now signed into law the Fiscal Year 2010 National Defense Authorization Act ([H.R. 2647](#)). [Section 565](#) of this law expands the FMLA military caregiver and exigency leave provisions.

Military Caregiver Leave. The 2008 amendments allowed an employee to take up to 26 weeks of unpaid leave to care for a family member injured while serving on active military duty. The new caregiver provision expands this leave entitlement to cover the care of veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness incurred in the line of active duty during the five-year period preceding the date of treatment, recuperation or therapy. Thus, care for an illness such as post-traumatic stress disorder that manifests itself after separation from service will now be covered. Further, the new law also allows caregiver leave for a pre-existing injury or illness that was aggravated in the line of duty while on active duty.

Exigency Leave. Under the 2008 amendments, the 12 weeks of exigency leave in connection with a call up applied only to National Guard members and reservists who were called to active service as part of a

“contingency operation.” Qualifying exigencies include short-notice deployment, military events (such as ceremonies or programs), childcare and school activities, financial or legal appointments, counseling, rest and recuperation, post-deployment activities and any other activities agreed to by the employer and employee.

The new law extends these benefits to eligible family members of the regular Armed Forces deployed to a foreign country. The prior requirement that the call up for members of the reserves or National Guard be in support of a contingency operation has been eliminated and replaced with the requirement that the deployment be to a foreign country.

BUCK COMMENT. *A number of states, including California and New York, have enacted family military leave laws that differ from the federal law in certain respects. Thus, employers should ensure that they are in compliance with applicable state laws as well.*

Effective Date. Although there is no effective date specified in the law, these provisions would appear to take effect upon enactment, i.e., October 28, 2009.

BUCK COMMENT. *DOL is expected to revise its required FMLA notice and regulations to implement the new provisions.*

Conclusion

Employers will need to update their FMLA policies and procedures to reflect these new military family leave entitlements. Because qualifying exigency leave is no longer limited to families of reservists, and military caregiver leave now extends to families of injured veterans, employers are likely to have more requests for military family leave. Thus, managers and those administering FMLA leave and other employee absence policies should be made aware of the new requirements, and employee handbooks and other communications should be updated as soon as possible.

Buck’s consultants would be pleased to discuss the new provisions with you and assist in your compliance efforts.

This FYI is intended to provide general information. It does not offer legal advice or purport to treat all the issues surrounding any one topic.