

# eLABORate

February 7, 2008

## Congress Amends Family and Medical Leave Act to Add New Leave Rights for Military Families

On January 28, 2008, President Bush signed into law the National Defense Authorization Act of 2008. Buried within the Act are significant revisions to the Family Medical Leave Act of 1993 (FMLA). These revisions extend coverage to employees who care for family members injured while on active military duty, or who must tend to other exigent circumstances arising from active military service. Specifically, the new FMLA provisions provide two new types of leave.

First, the FMLA now allows up to twelve weeks leave during any twelve month period because of any “qualifying exigency” arising out of the fact that a spouse, son, daughter, or parent of an employee is on active military duty, or has been notified of an impending call to active military duty. This provision will not take effect until the Department of Labor issues regulations defining a “qualifying exigency.” It is difficult to predict how the Department will define the term, but it already has encouraged employers to grant this type of leave liberally to qualifying employees.

Second, the new provisions allow up to twenty-six weeks leave during a twelve month period for a service member undergoing medical treatment, recuperation, or therapy for a “serious injury or illness” incurred in the line of duty. Under military regulations, injuries incurred “in the line of duty” are not limited to combat injuries. They can include things like car accidents, and non-combat-related illnesses like cancer, if they arise while a service member is actively serving. Family members caring for injured service members are likewise entitled to twenty-six weeks leave per year. Unlike the “qualifying exigency” provision, this requirement took effect immediately when the President signed the Act.

It should be noted that both leave periods run concurrently with other types of leave available under the FMLA. So, for example, an employee who has taken twelve weeks of leave for a “qualifying exigency” will be entitled to fourteen additional weeks—not twenty-six—to care for an injured family member in the same year. Also, because the Act amends the FMLA, and not the Uniformed Services Employment and Reemployment Rights Act (USERRA), it applies only to employers with 50 or more employees.

Covered employers should promptly amend their FMLA policies to reflect these significant changes in the

circumstances justifying leave. Further, until the Department of Labor issues regulations clarifying the law’s specific requirements, employers should proceed with caution and consult counsel with any questions about leave related to military service.

## eLABORate

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