

OBAMA EXPANDS RECENTLY ENACTED EXIGENCY AND CAREGIVER LEAVE PROVISIONS FOR MILITARY FAMILIES UNDER THE FAMILY AND MEDICAL LEAVE ACT OF 1993

On October 28, 2009, President Obama signed into law the Fiscal Year 2010 National Defense Authorization Act (H.R. 2647). Among other things, the new law includes an expansion of the recently-enacted exigency and caregiver leave provisions for military families under the Family and Medical Leave Act of 1993 (FMLA). The legislation does not include an effective date, suggesting that it took effect immediately upon the President's signature.

In January 2008, Congress amended the FMLA to provide "exigency leave" which provided for up to 12 weeks of leave for urgent needs related to a reservist family member's call to active service. It was intended to help those family members with imminent leave situations and obligations where their spouse, parent or child, was called to active duty in support of a contingency operation. It was confined to family members of those in the National Guard or Reserves. The new requirement extends that leave to the family members of a member of any regular component of the Armed Forces, and removes the requirement that it be in support of a contingency operation. It does not alter the actual leave period, which continues to provide for up to 12 weeks of FMLA leave on an annualized basis.

The 2008 revisions to the FMLA also included "caregiver leave" providing up to 26 weeks of unpaid leave to an employee to care for a family member (spouse, son, daughter, parent, or next of kin) who is injured while serving on active military duty. Eligibility for military-caregiver leave had been confined to the family of active duty members. The new law extends this provision to close family members of veterans who were members of the Armed Forces (including the National Guard or Reserves) at any point in time within five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy. Consequently, the family members of veterans now enjoy the same leave rights as those afforded relatives on active duty status.

The new law also changes the definition of "serious injury or illness" for active duty members and provides a somewhat different definition for veterans. Both definitions now include any preexisting injury or illness that was aggravated by service in the line of duty on active duty in the Armed Forces. For veterans, the definition adds that the injury or illness may manifest itself before or after the member became a veteran.

To achieve compliance, employers should immediately take steps to revise and update their FMLA policies to include these changes. Employers also should inform those employees responsible for administering attendance and leave matters of these new provisions. It is likely that the Department of Labor will issue new certification forms and other FMLA related forms to comport with these revisions.

NEW EEO POSTER REQUIRED BY NOVEMBER 21

A new federal posting requirement becomes effective November 21. The Equal Employment Opportunity Commission has revised its "Equal Employment Opportunity is the Law" poster. This new version reflects current federal employment discrimination law, including the Americans with Disabilities Act Amendments Act of 2008. The poster also was revised to add information about the Genetic Information Nondiscrimination Act of 2008, which also is effective November 21, 2009. The revised poster also includes updates from the Department of Labor.

To comply with the law, print and post the EEOC's 2009 version of the "EEO is the law poster." It can be found at <http://www.eeoc.gov/posterform.html>.

eLABORate

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