

Family and Medical Leave Act Expanded for Military Families

On January 28, 2008, President Bush signed into law the National Defense Authorization Act (NDAA), for Fiscal Year 2008 which amends the Family and Medical Leave Act of 1993 (FMLA) in two ways for the first time since it was enacted. The NDAA amendment expands the FMLA for employees in military families.

Family Military Leave

The federal FMLA generally provides eligible employees up to 12 weeks of unpaid leave during a specified 12-month period for the following four reasons:

1. The birth of a child and to care for that child;
2. Placement of a child for adoption or foster care with the employee or to care for the child after placement;
3. To care for the employee's spouse, child or parent with a serious health condition; and,
4. A serious health condition that renders the employee unable to work and/or perform the essential functions of the employee's job.

As amended by the NDAA, a fifth reason was added to the FMLA regarding Family Military Leave. Eligible employees can now take up to 12 weeks of unpaid job-protected leave in a specified 12-month period for the following reason:

5. Because of "any qualifying exigency" arising out of the fact that the spouse, son, daughter or parent of the employee is on active duty or has been notified of an impending call to active duty status, in support of a contingency operation.

The term "qualifying exigency" and the certification requirements are not defined in the statute and will be defined by the regulations. The DOL published a [Notice of Proposed Rulemaking](#) under the Family and Medical Leave Act. Interested parties are encouraged to submit comments by April 11, 2008 as to how it should define a "qualifying exigency."

In the meantime, employers may be unsure whether they must provide leave for a qualifying exigency. The DOL encourages employers to provide this type of leave to qualifying employees. During this period of regulatory uncertainty, granting leave liberally to any employee who requests leave on the basis of a "qualifying exigency" will help employers avoid liability if a qualifying exigency is later determined to have existed.

Servicemember Family Leave

The NDAA also added an additional entitlement, "Servicemember Family Leave". This entitlement provides that an eligible employee who is the spouse, son, daughter, parent, or nearest blood relative ("next of kin") of a *covered servicemember* is entitled to a total

of 26 workweeks of leave during a single 12-month period to care for the servicemember. The employee eligibility requirements are the same as FMLA.

A “Servicemember Family Leave” is combined with all other FMLA leaves, limiting FMLA leave for the five triggering events plus “Servicemember Family Leave” to a combined total of 26 weeks of leave during a specified 12-month period. The “servicemember family leave” requirement went into effect on January 28, 2008.

A “covered servicemember” is defined as a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

A “serious injury or illness” is limited to “an injury or illness incurred by the member in the line of active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.”

As an employer, you may want to work with your counsel to revise your FMLA policies to add the FMLA Military Amendments. As more information is received from the DOL, we will provide additional updates.

C.M. Smith Agency, Inc. is not a law firm and therefore we are not able to give legal advice. You should consult with legal counsel if you have specific questions on this subject matter.