

FMLA-Covered Employers Must Grant Military Family Leave

In January 2008, President Bush signed into law the National Defense Authorization Act which expanded the Family and Medical Leave Act of 1993 (FMLA) for families of military personnel. Employers are advised to notify employees of the new leave provisions, revise existing leave policies and be alert to further requirements once the Department of Labor issues new FMLA regulations.

Under the FMLA, eligible employees are able to take up to 12 workweeks of unpaid FMLA leave during any 12 month period for one or more of the following reasons: 1) the birth of a child of the employee and in order to care for the child; 2) the placement of a child with the employee for adoption or foster care; 3) in order for the employee to care for the employee's spouse, child, or parent with a serious health condition as defined by the law; or 4) the employee's own serious health condition. With the new law, employees are entitled to 12 workweeks of leave due to any "qualifying exigency" arising out of the fact that the employee's spouse, child or parent is on active duty (or has been notified of an impending call or

order to active duty) in the Armed Forces in support of a "contingency operation." "Contingency operation" includes military actions as designated by the Secretary of Defense involving hostilities against an enemy of the United States or other calls to duty during times of war or national emergency. The term "qualifying exigency" is not defined in the statute but the Department of Labor has been charged with the task of promulgating regulations defining the term. A "qualifying exigency" leave will not take effect until the Department of Labor has issued its regulations.

The legislation also provides a "Servicemember Family Leave" which entitles an eligible employee who is a spouse, child, parent or next of kin of a covered service member to a total of 26 workweeks of leave during a 12 month period to care for the covered service member. The term "covered service member" means members of the Armed Forces, including the National Guard or Reserves, who are undergoing medical treatment, recuperation or therapy, are in outpatient status, or are on the temporary disability retired list due to

an injury or illness incurred in the line of duty. "Next of kin" is defined as the nearest blood relative of the covered service member. Eligible employees are permitted to take this leave on an intermittent or reduced leave schedule basis with proper certification.

The Department of Labor is in the process of promulgating regulations which will provide employers with further guidance about the new requirements, however, in the meantime, employers must apply the current FMLA provisions to the new categories of leave. In addition to addressing the new military family leave, it is expected that the new regulations will include technical changes to reflect decisions by the U.S. Supreme Court and lower courts; increased notice obligations for employers; revised employee notice rules to minimize workplace disruptions attributable to unscheduled FMLA absences; and guidance on the regulatory definition of "serious health condition."

Employers are advised to revise existing FMLA policies and provide notice to employees of these expanded rights. For assistance in preparing proper written notice, or in revising existing policies, contact [Stacey A. DeKalb](mailto:Stacey.A.DeKalb@lommen.com) at 612-336-9310, 800-752-4297 or stacey@lommen.com. Stacey DeKalb is chair of Lommen Abdo's [Employment Practice Group](#).

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