

# Alert: FMLA Military Leave Law Expanded

October 30, 2009

Just as the ink is drying on employers' updates of their Family and Medical Leave Act (FMLA) policies to add the new military leave provisions, the law has changed again. On October 28, 2009, President Obama signed into law the Fiscal Year 2010 National Defense Authorization Act (H.R. 2647), which includes an expansion of the exigency and caregiver leave provisions for military families under the FMLA.

On January 28, 2008, the National Defense Authorization Act amended the FMLA by adding the two categories of unpaid leave for employees with family members serving in the military: covered servicemember family leave and qualifying exigency leave.

The covered servicemember family leave requirements became effective on January 28, 2008 and allowed eligible employees to take up to 26 weeks of FMLA leave to care for a spouse, son, daughter, parent or next of kin who has a serious injury or illness incurred in the line of active duty. H.R. 2647 expands this requirement to include leaves to care for veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness if the veteran was a member of the Armed Forces at some point during the five years preceding the date of treatment. (The serious injury or illness still needs to have occurred or been aggravated by the member in the line of duty for this FMLA leave to apply.)

The qualifying exigency leave allows eligible employees to take up to 12 weeks of FMLA leave to handle exigencies related to a family member's active duty military service or call to active duty. "Qualifying exigencies" for this purpose include (1) short notice deployment, (2) military events and related activities, (3) childcare and school activities, (4) financial and legal arrangements, (5) counseling, (6) rest and recuperations, (7) post-deployment activities and (8) additional activities to address other events that arise out of the covered service member's active duty or call to active duty status. These provisions were effective on January 16, 2009. Although the original law only provided exigency leave to family members of National Guard and Reservists; H.R. 2647 expands the exigency leave benefits to include family members of all active duty service members.

The H.R. 2647 revisions to the new FMLA military leaves are effective upon the law's enactment on October 28, 2009.

Employers should check their FMLA policies to make sure the provisions describing covered servicemember family leave and qualifying exigency leave do not conflict with these new H.R. 2647 expansions.

For more information, contact your McGlinchey Stafford Labor and Employment attorney.