

# FMLA Amended to Add Leave for Military Families

January 31, 2008

Buried deep in the National Defense Authorization Act for Fiscal Year 2008, signed into law on January 28, 2008, is section 585, which revises the Family and Medical Leave Act. Immediately effective provisions will require all covered employers to review their current FMLA policies and practices to avoid violating the newly-revised law.

Under the revised FMLA, there are two new types of leave available to eligible employees:

- **Leave due to call to active duty:** a total of 12 workweeks of leave during any 12-month period (including leave taken for other FMLA qualifying reasons) because of any “qualifying exigency” (which regulations will eventually define) arising out of the fact that the spouse, or a son, daughter, or parent of the employee 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.
- **Caregiver Leave:** a total of 26 workweeks of leave during a 12-month period for the spouse, son, daughter, parent, or next of kin of a covered servicemember to care for the servicemember. The term “covered servicemember” means 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.

An employer may require certification to support requests for this leave, although regulations regarding the timing and manner of such certification have yet to be written. This leave may be taken intermittently or on a reduced leave schedule. As with the other types of FMLA leave, when the necessity for this leave is foreseeable, the employee should provide as much notice to the employer as is reasonable and practicable. Finally, there are limitations for leave available when both spouses have the same employer.

The Department of Labor has issued guidance confirming that the amended provisions take effect on different dates. The provision regarding caregiver leave went into effect as soon as the President signed the bill into law. The provision regarding leave due to a call up to active duty will not go into effect until there are regulations defining “qualifying exigency,” but the DOL encourages employers to provide this kind of leave before regulations are issued. The DOL reports that work on proposed regulations is underway. More comprehensive guidance is expected to be issued as well.

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If you have any questions on how your current FMLA policy should be amended to ensure compliance with these revisions, please contact your McGlinchey Stafford Labor and Employment practice group attorney.