

FMLA Changes Signed into Law

Legal Alert
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Garvey Schubert Barer Legal Update, January 30, 2008.

As part of the National Defense Authorization Act, President Bush recently signed into law expansions to the Family and Medical Leave Act (FMLA). These changes provide job-protected leave to workers to care for wounded family servicemembers and under certain circumstances when reservists are on or called to active duty. The Department of Labor needs to issue regulations to clarify certain portions of the new law as well as define some terms. The law should be considered to be effective immediately, even though there is no effective date in the legislation.

1. **Wounded Servicemembers.** This leave entitles an eligible employee who is the spouse, child, parent or *next of kin* [*note the new FMLA term meaning the nearest blood relative of the covered servicemember*] of a covered servicemember a total of 26 weeks of unpaid leave to care for the servicemember if he or she is receiving medical treatment for, or recuperating from, a serious injury or illness incurred while serving in the U.S. military. The "serious injury or illness" means an injury or illness incurred by the member in line of duty on 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. This 26 weeks of leave is only available during a single 12-month period [i.e., probably can only be taken once!] and can be taken intermittently, in increments equal to the shortest period of time tracked by an employer's payroll system. A husband and wife who work for the same employer may be limited to taking a total of 26 workweeks of leave during a 12-month period.
2. **Active Duty Call-up.** This leave entitles immediate family members of a reservist or member of the National Guard up to 12 weeks of FMLA leave due to a "qualifying exigency" when the servicemember is on or called to active military duty. The Department of Labor will need to define what constitutes a "qualifying exigency."

It is possible that the need for new regulations to address these FMLA changes may prompt further regulatory changes to the FMLA. You should update your FMLA policies, and your handbook, to reflect these changes. Even though the regulations are not issued, there is the immediate expectation that employers will let their employees know of these changes and additional rights under the law.

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