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NewsFlash!

AMENDMENTS TO FMLA EXTEND NEW LEAVE RIGHTS TO FAMILY MEMBERS OF MILITARY PERSONNEL

By: David R. Bohm

Within the last several days, President Bush signed the National Defense Authorization Act, which included amendments which expanded the coverage of the Family and Medical Leave Act ("FMLA"). These changes provide job-protected unpaid leave to covered workers to care for family members who are injured or become ill while serving in the armed forces, and when reservists are called to active duty in a "qualifying exigency" (a term which is likely to be defined under future regulations to be issued by the Department of Labor, but which clearly includes service in Iraq and Afghanistan). Because the law did not have a specific effective date, it is effective immediately.

Wounded Service Members

Under the FMLA amendments, an eligible employee who is the spouse, child, parent or next of kin of a service man or woman is entitled to a total of up to 26 weeks of unpaid leave to care for the servicemember if he or she is receiving medical care for, or recuperating from, a serious injury or illness suffered while serving in the military. The term "next of kin" has not previously been used in FMLA and is undefined by the statute. Exactly who qualifies as a "next of kin" is likely to be defined under new regulations to be issued by the Department of Labor ("DOL"). A serious injury or illness

is one that renders a servicemember medically unfit to perform his or her military duties. The 26 weeks of leave can only be taken during a single 12-month period (i.e., can not be taken in successive years due to the same injury or illness). Leave may be taken intermittently. The employer must allow the employee to take leave in increments as small as the shortest period of time that the employer regularly tracks in its payroll system (e.g., if a time clock is utilized by an employer, the increment can be measured in minutes). If a husband and wife are employed by the same employer, they may be limited to taking a total of 26 weeks of unpaid leave between them.

Reservists Called to Active Duty

Family members of reservists called to active duty due to a "qualifying exigency" will be entitled to take up to 12 weeks of unpaid FMLA leave when the servicemember is called up or while he is serving on active military duty. It appears that this leave can be used either to help prepare the servicemember for call up, or to deal with the kind of challenges faced by family of active-duty reservists due to their absence from home. Again, the term "qualifying exigency" will have to be defined by DOL regulation.

Questions? Call 314.726.1000

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Are My Employees Covered Under the New Provisions?

Generally, if you are an employer subject to FMLA, the new provisions will apply to your employees. An employee has the right to take unpaid leave under FMLA if he/she works at a site where his/her employer employs 50 or more persons, or if the employer employs 50 or more persons within a 75-mile radius of the employee's work site.

Proactive Steps for Employers

If you are an employer subject to FMLA, it is important that you update your FMLA policies and your employee handbook to reflect these recent amendments to FMLA. You should also take action to immediately inform employees of the additional rights granted to them by these amendments. Danna McKitrick, P.C. would be pleased to assist your company with these tasks.

Questions? Call 314.726.1000

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