



FAMILY MEDICAL LEAVE ACT AMENDED AS PART OF NATIONAL DEFENSE AUTHORIZATION ACT

On January 28, 2008, the Family and Medical Leave Act ("FMLA") was amended as part of the National Defense Authorization Act ("NDAA") for Fiscal Year 2008. A copy of the amended FMLA is available at www.dol.gov. The amendments provide special leave rights to family members of certain servicemembers. There are two different types of leave rights created by the amendments:

(1) The circumstances for which up to 12 weeks of FMLA leave is available in a 12 month period are extended to include an additional qualifying reason ---"because of any qualifying exigency (as the Secretary shall, by regulation, determine) 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." 29 USC 102(a)(1)(E). Until regulations define a "qualifying exigency" for which the leave is available, employers should not be required to extend this leave. An employer may require certification

for this leave should the Secretary's regulations provide for the manner and timing of any such certification. 29 U.S.C. Sec. 103(f).

(2) Effective immediately, up to 26 weeks of protected leave "in a single 12 month period" is available to an employee who is a spouse, son, daughter, parent, or nearest blood relative ("next of kin") to care for a "covered servicemember." 29 U.S.C. Sec. 102(a)(3). "Covered servicemember" is defined as "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." 29 U.S.C. Sec. 101(16) "Serious injury or illness" is also defined and means, in the case of a servicemember, "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." 29 U.S.C. Sec. 101(19) An

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employer may require medical certification of the need for such leave. 29 U.S.C. Sec. 103(a).

etc.) are made applicable to the new types of FMLA leave.

Both types of leave may be taken intermittently or on a reduced leave schedule, subject to any certification requirements.

All FMLA rights afforded employees (such as reinstatement, maintenance of health benefit coverage,

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