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Legal Alert: FMLA Military Leave Provisions Amended (Again!)

On October 28, 2009, President Obama signed into law several amendments to the Family and Medical Leave Act (FMLA) related to the “military caregiver” and the “qualifying exigency” military leave entitlements of the FMLA. Because the amendments do not have a specific effective date, the presumption is that these changes took effect when President Obama signed the law on October 28, 2009. The U.S. Department of Labor will issue guidance to address those changes in the near future. For quick facts regarding FMLA employer coverage and employee eligibility please click here: <http://www.dol.gov/whd/regs/compliance/whdfs28.pdf>

Qualifying Exigency Leave

The new law extends qualifying exigency leave to an eligible employee whose spouse, son, daughter, or parent is a member of **any branch of the military**, including the National Guard or Reserves, who was deployed or called to active duty in a foreign country.

Prior to these amendments, an eligible employee whose spouse, son, daughter or parent was on active duty, or called to active duty, in support of a contingency operation as a member only of the National Guard or Reserves was entitled to qualifying exigency leave. In addition to extending qualifying exigency leave to eligible family members of a member of any branch of the Armed Forces, the changes eliminate the requirement that the active duty be in support of a “contingency operation.”

This will remind you that a covered employer must grant an eligible employee up to a total of 12 work weeks of unpaid leave during the normal 12-month period established by the employer for FMLA leave. The reasons for which an eligible employee can take qualifying exigency leave are unchanged. Such leave can still be taken for short-notice deployment, military events and related activities such as official ceremonies, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and additional activities to address other events which arise out of the covered military member’s active duty or call to active duty status.

Military Caregiver Leave

The new amendments expand military caregiver leave in two ways:

First, the new law extends military caregiver leave to eligible family members of **veterans who were members of any branch of the military at any time within five years of receiving medical treatment** that triggers the need for military caregiver leave. Employees who

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are family members of current service members or veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty may take caregiver leave of up to six months as long as the veterans were members of the military within five years of receiving such treatment.

A family member can take up to 26 weeks of FMLA leave to care for a veteran if the veteran seeks medical treatment for a serious service-related injury or illness incurred while in the line of duty and within five years of serving in the military. Employers do not have the option of using the calendar-year method to determine the 12-month period for taking military caregiver leave. Instead, the 12-month period begins when the employee begins using caregiver leave.

Second, the new amendment expands the definition of a “**serious injury or illness**” for purposes of determining eligibility for military caregiver leave. Employees may therefore now take military caregiver leave for a family member whose pre-existing injury or illness was aggravated while on active duty.

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