

Family and Medical Leave Act Amended to Benefit Military Service Members Families

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In the more than 600 pages of the 2010 National Defense Authorization Act, there are three pages expanding rights under the Family and Medical Leave Act (FMLA). The changes affect leaves of absences for “qualifying exigencies” and “military caregiver” leaves.

Previously under FMLA, an employee was entitled to leave for a qualifying exigency when the employee’s son, daughter, spouse or parent was called to active duty. However, this leave was not available if the employee’s relative was a member of the regular armed forces (army, navy, air force, marines, etc.). This right to leave has been expanded to cover an employee whose son, daughter, spouse or parent is a member of the regular armed forces and deployed to a foreign country.

The term “qualifying exigency” includes such things as attending military events, for childcare and school activities, to make financial and legal arrangements, to spend time with the military member when he or she is home for rest and recuperation, post-deployment activities, etc.

In addition, an employee, who is the spouse, child, parent or the next of kin of a “covered service member” with a serious injury or illness incurred in the line of duty, is entitled to a total of 26 workweeks of leave during a single 12-month period to care for the service member.

Previously, a “covered service member” meant a member of the armed forces (including the National Guard or Reserves), who is:

- Undergoing medical treatment, recuperation or therapy
- Otherwise in outpatient status (i.e., assigned to a military medical treatment facility as an outpatient or a unit established for providing medical care to members of the armed forces on an outpatient basis)
- On the temporary disability retired list for a serious injury or illness.

Previously, such leave was not available to care for *former* service members. Now, however, leave may be taken to care for a veteran who served at anytime during the five-year period preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

FAMILY AND MEDICAL LEAVE ACT AMENDED TO BENEFIT MILITARY SERVICE MEMBERS FAMILIES Cont.

Employers should revise their policies to accurately reflect the new leave entitlement, and given the complexity of the Act, questions concerning the FMLA should be directed to an experienced employment attorney.

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