

Updates to the New Military FMLA Leave Provisions

Last year, the Department of Labor issued new rules for interpreting the Family and Medical Leave Act and included two new categories of leave to apply to the families of members of the military. These leave categories, qualifying exigency leave and military caregiver leave, were expanded in October of 2009 when President Obama signed into law the National Defense Authorization Act for FY 2010 (NDAA). The expansion of these two leave categories is explained in further detail below.

Qualifying Exigency Leave

This category of leave allows a military family member to take up to 12 weeks of FMLA for a set of defined qualifying exigencies. These are: address issues that arise from a short notice deployment; to make financial and legal arrangements; to attend military events and related activities; to arrange child care and school activities directly related to the deployment; to spend time with a covered military member who is on short term rest and recuperation; to attend post-deployment activities; and activities that the employer and employee agree should qualify as an exigency.

Originally, this category of leave applied only to service members in the National Guard and reserves, certain retired members of the regular armed forces and retired reserves on active duty. The NDAA expands the category of those eligible to take this leave. Now members of a regular component of the Armed Forces who are deploying to a foreign country are also covered. This means that family members of members of the regular Army, Navy, Marines, Air Force, and Coast Guard who are eligible to take FMLA leave for the above list of qualifying exigencies.

The NDAA specifies that in any case where the necessity for qualifying exigency leave is foreseeable by the employee, the employee shall provide such notice to the employer as is “reasonable and practicable.”

Military Caregiver Leave

This category of leave originally provided up to 26 workweeks of unpaid military caregiver leave in a single 12-month period for family members caring for a covered service member with a serious injury or illness incurred in the line of duty on active duty. An eligible employee may take leave to care for a covered service member with a serious injury/illness incurred in the line of duty for which the service member is (1) undergoing medical treatment, recuperation or therapy, (2) otherwise in outpatient status or (3) otherwise on the temporary disability retired list.

Two key definitions are expanded in this section: those of “covered service member” and of “serious injury or illness.” The definition of “covered service member” has been expanded to include veterans who served in the regular Armed Forces, the Reserves within 5 years of the date the veteran undergoes medical treatment, recuperation, or therapy. The definition of “serious injury or illness” has been expanded to include conditions that existed before the beginning of the covered service member’s active duty but was aggravated by service in the line of duty on active duty.

New regulations are expected from the Department of Labor in regards to these changes to the Family and Medical Leave Act of 1993.

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