

Employment Law E-Alert

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FMLA Is Amended To Extend Leave To Military Families

On January 28, 2008, President Bush signed legislation amending the Federal Family and Medical Leave Act of 1993 ("FMLA") granting FMLA-protected leave to employees who provide care to wounded U.S. soldiers, as well as to family members of military personnel called to active duty. This is the first expansion of the FMLA since the law was enacted in 1993, and the amendments are effective immediately.

Up until now, the FMLA generally required employers of 50 employees in a 75 mile radius to provide up to 12 weeks of unpaid leave to eligible employees who have a serious health condition or employees who are needed to care for a parent, child or spouse with a serious health condition. The recent modifications to the FMLA create two new circumstances in which eligible employees with family members in the Armed Forces may take protected FMLA leave.

"Caregiver" Leave to Care For Injured Servicemember

First, the new amendments more than double (from 12 to 26 weeks per year) the available time an eligible employee can take off from work to care for an injured servicemember. Specifically, the amendment provides that the spouse, child, parent or "next of kin" (defined as the "nearest blood relative") of a "covered servicemember" is entitled to the leave to care for the servicemember, which broadens the class of employees who can take FMLA leave. A "covered servicemember" is defined as a member of the Armed Forces (including the National Guard or reserves) who suffered an injury or illness while on active-duty that may render the person medically unable to perform the duties of the member's office, grade, rank or rating. In short, the FMLA amendments provide for an additional 14 weeks of unpaid leave (beyond the original 12 weeks) for those eligible employees when they are caring for injured soldiers. This new FMLA "caregiver" leave is apparently only available once during a single 12 month period.

"Active Duty" Leave

Second, the recent amendments to the FMLA also add a new qualifying event for the 12 weeks of FMLA leave. Specifically, the statute now provides up to 12 weeks of leave because of any "qualifying exigency" arising out of the fact that a covered employee's spouse, child or parent is on, or has been called to, active duty in the Armed Forces. While Congress has not yet defined the term "qualifying exigency," it is expected that the Secretary of Labor will soon issue regulations defining what that term means.

This new FMLA amendment broadens the existing Illinois Family Military Leave Act which, among providing other benefits, allows an eligible employee at least 15 days of unpaid leave if they are either a spouse or parent of a soldier being called into active military duty, without regard to any medical issues.

Because these amendments simply amend the original 1993 statute, other traditional FMLA requirements, such as the 50 or more employee threshold, the requirement to continue group health plan coverage during the leave and returning the employee to the same or equivalent position as when their leave commenced, will still apply to the newly granted types of FMLA leave. Additionally, the employer may still require the substitution of any of the employee's accrued paid vacation leave, paid time off, personal leave, family leave, or medical or sick leave for any portion of the new leave entitlements.

The FMLA amendments became effective immediately when President Bush signed them into law on January 28, 2008. The Secretary of Labor will now begin work on regulations to implement the new provisions and to provide

guidance for employers and employees. In the meantime, however, employers are required to comply with the new FMLA amendments.

In light of these recent and significant modifications to the FMLA, employers should take the following steps:

- Amend their FMLA policies to provide employees with notice of these new leave entitlements and disseminate them to employees in a way that will enable the employer to prove receipt of the new policies;
- Prepare updated certification forms that employees needing leave under the amendments can take to military authorities to verify their eligibility for leave;
- Establish procedures so that employees subject to these leave entitlements can maintain benefits while on leave, and to enable employees to be reinstated (when appropriate) at the conclusion of their leave;
- Obtain and post updated FMLA posters for the worksites; and
- Train employees and supervisors on the FMLA's new obligations and rights.

We will provide additional notices and information when the Department of Labor issues any regulations defining or interpreting the new FMLA provisions. In the meantime, if you have any questions regarding the new FMLA amendments, or any other employment related question, please contact E. Jason Tremblay or your Arnstein & Lehr LLP employment attorney.