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CLIENT ALERT

Congress Expands Military Leave Coverage Under the FMLA

On October 28, 2009, President Obama signed into law the 2010 National Defense Authorization Act (the "Act"), which among other things expands coverage under the "qualifying exigency leave" and "military caregiver leave" provisions of the Family and Medical Leave Act (FMLA). (See our Client Alert dated February 5, 2008, at http://www.putneylaw.com/cu_020508.html). As the legislation does not indicate an effective date, it took effect immediately upon the President's signature.

Expanded Qualifying Exigency Leave

"Qualifying exigency leave" allows eligible employees with a spouse, child, or parent who is on, or has been called to, active duty in the Armed Forces in support of a contingency operation, to take up to 12 weeks of unpaid leave upon experiencing a "qualified exigency," such as short-notice deployment, military events and related activities, financial and legal matters, child care and school activities, rest and recuperation, post-deployment activities, and additional activities agreed upon by the employer and the employee. When it was initially passed, qualifying exigency leave was confined to family members of individuals in the National Guard or Reserves. The Act extends this leave to family members of any regular component of the Armed Forces and removes the requirement that it be in support of a contingency operation. The Act does not alter the actual leave period.

Expanded Military Caregiver Leave

"Military caregiver leave" allows eligible employees to take up to 26 weeks of unpaid leave in a 12-month period to care for an injured service member who has a serious illness or injury that was incurred in the line of duty while on active duty. At its inception, military caregiver leave was only available to the family of active duty members. The Act now extends this provision to family members of veterans who were

members of the Armed Forces (including the National Guard or Reserves) at any time within five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy.

The new law also revises the definition of “serious injury or illness” for both active duty members and veterans. The definition now includes an injury or illness that existed before the beginning of the member’s active duty and that was aggravated by service in the line of duty on active duty in the Armed Forces. For veterans, the definition further adds that the injury or illness may manifest itself before or after the member became a veteran.

Employers should take immediate steps to comply with the new law by revising their existing FMLA policy to include Regular Armed Forces under the scope of qualifying exigency leave and deleting references to “contingency operations,” and to provide caregiver leave for family members of veterans. We are available to assist you in this regard.

It is anticipated that the Department of Labor will issue new certification forms and other FMLA-related documents to comport with the Act’s requirements.

We invite your inquiries regarding the 2010 National Defense Authorization Act or any other issue present in your workplace.

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