



IMPORTANT – PLEASE READ

NEW LEGISLATION DRAMATICALLY INCREASES FMLA ENTITLEMENT FOR FAMILIES OF ARMED FORCES PERSONNEL

In recent days, the first expansion of the Family and Medical Leave Act (“FMLA”) since its enactment in 1993 has been completed. These changes are significant, will take effect immediately, and will require employers to make adjustments to their FMLA policies and procedures.

On January 28, 2008, President Bush signed into law the National Defense Authorization Act. Section 585 of this new law provides for the expansion of FMLA rights to family members of Armed Forces personnel. Effective immediately, employers must grant leave to eligible employees who experience a “qualifying exigency” as a result of a family member’s call to active duty in the Armed Forces and to employees whose immediate family members have suffered an injury or illness while on duty in the Armed Forces.

While the FMLA has always provided for up to 12 weeks of unpaid leave per year for an employee to care for a family member’s serious medical condition, these new amendments now provide up to 12 weeks of unpaid leave for any eligible employee whose spouse, son, daughter, or parent has been called to or has been informed of a pending call to active duty in the Armed Forces. Importantly, a serious health condition does not appear to be necessary to trigger eligibility for such leave because, by the amended terms of the FMLA, such leave must be granted in the case of a “qualifying exigency.” That term is not defined within the statute and will be determined by the Department of Labor through the promulgation of an administrative regulation. Employers may, however, require that any request for this type of leave be supported by a certification verifying the family member’s call to active status.

In addition, this new legislation also dramatically increases the amount of leave available for eligible employees whose family members have suffered an injury or illness while serving in the Armed Forces. Effective immediately, an eligible employee who is the spouse, daughter, parent, or next of kin of a recovering service member is entitled to up to 26 weeks during a 12-month period to care for that service member. Significantly, this new provision expands the definition of an eligible employee to include “next of kin,” which is defined as the service member’s nearest blood relative. The statute also defines a recovering service member as a member of the Armed Forces, including the National Guard or Reserves, who has suffered an injury or illness while on active duty that may render the person unable to perform the duties of the member’s office, grade, rank or rating. This definition includes, among other things, servicemembers undergoing medical treatment, receiving therapy, or those in outpatient status.

Finally, employers should also be aware that existing provisions of the FMLA relating to employer coverage, employee eligibility requirements, continuation of health insurance coverage and job reinstatement shall apply to these new types of leave for family members of Armed Forces personnel.

It is recommended that employers immediately modify their existing FMLA policies to provide notice to employees of these important changes. If you have any questions, or seek advice regarding your current FMLA policies and procedures, please contact your Cohen & Grigsby labor and employment attorney.

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