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Obama Expands FMLA Coverage for Military Families Through 2010 National Defense Authorization Act

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Insight — 11/10/2009

On October 28, 2009, President Obama signed into law the Fiscal Year 2010 National Defense Authorization Act (2010 NDAA). The new law includes an expansion of the Bush-enacted exigency and caregiver leave provisions for military families under the Family and Medical Leave Act of 1993 (FMLA). These expanded military family leave rights are effective immediately.

The following compares some aspects of the 2008 Bush-enacted FMLA amendments and the 2010 revisions:

Exigency Leave:

Under the Bush-enacted 2008 amendment to the FMLA, family members of the Reserves or National Guard called to active duty were granted up to 12 weeks of leave for urgent "qualifying exigencies" related to a reservist family member's (spouse, son, daughter, or parent) call to active service.

Regulations adopted by the Department of Labor (DOL) in January 2009 defined the term "qualifying exigency" to include the following situations: (1) short-notice deployment, (2) military events and related activities, (3) urgent childcare and school activities, (4) financial and legal tasks, (5) counseling, (6) rest and recuperation, (7) post-deployment activities, and (8) additional purposes arising out of the military member's active duty or call to active duty status, provided the employer and employee agree. A new optional WH384 form was provided by DOL.

2010 Changes – Expands the qualifying exigency leave benefits to include family members of active duty service members, since under the 2008 amendments, only family members of National Guard and Reservists were eligible for qualifying exigency leave.

Caregiver Leave:

Under the Bush-enacted 2008 amendments to the FMLA,

covered family members were eligible for up to 26 weeks of unpaid leave to care for a family member (spouse, son, daughter, parent, or next of kin) who is injured while serving on active military duty.

2010 Changes – Expands the caregiver leave provision to include veterans who are undergoing medical treatment, recuperation or therapy for serious injury or illness that occurred any time during the five years preceding the date of treatment.

The new 2010 revisions to the NCAA are not complicated, but employers should revisit their FMLA policy to update for the new eligibility. Remember, the 2010 changes are effective immediately.

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