

Employment Edge 106th Edition—New National Defense Law Contains Amendments to the FMLA

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On October 28, 2009, President Obama signed into law the National Defense Authorization Act (NDAA) for Fiscal Year 2010. Included in the NDAA is the Supporting Military Families Act of 2009, which makes two small but important changes to the military family leave available under the Family and Medical Leave Act (FMLA). These amendments are effective immediately. All FMLA covered employers should review and update their FMLA policies to reflect these changes.

In 2008, the FMLA was amended to provide two new types of FMLA leave to employees who have a family member serving in the armed services:

1. **On an annual basis:** Up to 12 weeks of leave for an "exigency" related to active duty service or call to active duty service in support of a contingency operation by the employee's spouse, son, daughter, or parent; and
2. **During a single 12 month period:** Up to 26 weeks of leave to care for a spouse, son, daughter, parent, or next of kin who is a member of the armed forces and who is undergoing medical treatment or who is medically unfit to perform military duties due to an injury or illness incurred while on active duty.

These two forms of leave remain intact but are slightly modified. Specifically, the new law provides:

- **Exigency leave is now available to servicemembers of any branch of the Armed Services deployed to a foreign country.** Previously, U.S. Department of Labor regulations limited exigency leave to National Guard and Reserve members, an interpretation that the sponsors of the Supporting Military Families Act of 2009 felt contradicted Congressional intent.
- **Family caregiver leave now applies to family members of veterans for up to five years after the veteran leaves service.** Family leave to care for a covered servicemember is now available up to five years after the veteran leaves the service if the veteran develops an injury or illness that was incurred or aggravated while on active duty. Previously, the leave only applied to family members of active servicemembers or servicemembers who were on the temporary disability retired list. The leave was not available to care for former members of the Armed Forces, former members of the National Guard and Reserves, or members on the permanent disability retired list. The new five year window for veterans is intended to help veterans who suffer from post-traumatic stress disorder and other conditions that are not necessarily evident at the time the servicemember leaves active duty.



Many employers are already generous in granting military family leave, therefore, these changes are not likely to have a significant effect on day-to-day administration of employee leaves. However, covered employers should review their policies and make necessary changes to accurately reflect the law and should notify employees of any changes to their policies. Employers should also watch for a revised FMLA poster from the Department of Labor that will reflect these changes.

If you have any questions about the FMLA or other employment law issues, please contact Abigail Crouse or another member of the Gray Plant Mooty Employment and Labor practice group.

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