

President Signs New Act Expanding FMLA for Military Families

On January 28, 2008, President Bush signed into law the Family Leave in Connection with Injured Members of the Armed Forces Act. The Act grants additional leave under the Family and Medical Leave Act of 1993 (FMLA). The Act creates two new categories of FMLA leave: “Active duty family leave” and “injured service member leave.”

1. **Active Duty Family Leave:** This leave provides up to 12 weeks of FMLA leave in any 12 month period to an eligible employee because of a “qualifying exigency” arising out of the fact that the employee’s spouse, child, or parent is on active duty or has been notified of an impending call to active duty. The term “qualifying exigency” has not yet been defined, but the legislature has instructed the U.S. Department of Labor to define "qualifying exigency" in subsequent regulations. The “qualifying exigency” provision is not effective until the Secretary of Labor issues final regulations defining “qualifying exigencies.” It is anticipated that a “qualifying exigency” will include situations whereby an employee is called upon to handle family and child-care responsibilities for covered service members who have been called to active duty. Examples may include arranging for child care and attending pre-deployment briefings. Until the DOL provides further guidance on this new legislation, employers are encouraged to act in good faith in providing this type of FMLA leave.
2. **Injured Service Member Leave:** This leave is for employees who have a family member injured in the line of duty. It gives an eligible employee who is the “spouse, son, daughter, parent, or next of kin” of a member of the Armed Forces who has sustained an injury or illness in the line of duty to take up to a total of 26 workweeks of job-protected leave during a single 12-month period to care for that service member. Injured Service Member Leave became effective the date the President signed the Amendment.

Because the amendments are part of the FMLA, employers should notify their employees of their rights under these amendments and update their FMLA policies. Employers should also determine whether their company will provide “qualifying exigency” leave pending the issuance of the final DOL Regulations.

If you need assistance with drafting a new FMLA policy, please contact Ken Winkler kwinkler@bfvlaw.com or 404-261-7711.

To view the full text of the amended law, go to:
<http://www.dol.gov/esa/whd/fmla/fmlaAmended.htm>