

# Employment, Benefits & Labor Alert

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## New Law Expands FMLA Coverage for Military Families

President Barack Obama recently signed into law the National Defense Authorization Act for Fiscal Year 2010 (NDAA). The NDAA includes provisions which amend the Family and Medical Leave Act (FMLA) to further expand military family leave entitlements. Under the new law, a larger population of employees is now eligible for FMLA leave due to “qualifying exigencies” and military caregiver leave. The NDAA’s changes to FMLA rights are effective immediately.

### Background

Congress first acted to extend FMLA coverage to military families in 2008 (“2008 Amendments”) (reported in our December 2008 Alert, entitled “Department of Labor to Enforce New Family Leave Regulations”). Pursuant to those changes, family members of the Reserves or National Guard who were called to active duty were entitled to up to 12 weeks of FMLA leave for qualifying exigencies. Regulations issued by the Department of Labor, which became effective earlier this year, defined the term “qualifying exigency” to include 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 employee.

The 2008 Amendments also revised the FMLA to provide that covered family members are eligible for up to 26 weeks of FMLA leave to care for injured service-members.

### Effect of NDAA

Recognizing that there were gaps in the 2008 Amendments, Congress incorporated additional changes into the NDAA to further benefit eligible military families. The new law includes three significant amendments to the FMLA:

#### 1. Expansion of Military Caregiver Leave to Families of Recent Veterans

Under the 2008 Amendments, a covered service-member for purposes of military caregiver leave was limited to a current member of the Armed Forces, including a member of the National Guard or Reserves, with a serious injury or illness incurred in the line of duty while on active duty. The military caregiver provisions did not extend to family members of veterans. The NDAA amends the FMLA by providing a new definition of “covered servicemember” which includes veterans with a serious injury or illness that arises within 5 years of military service.

## 2. New Definition of “Serious Injury or Illness”

The 2008 Amendments provided that military caregiver leave could only be taken with respect to a serious injury or illness that occurred while on active duty. The NDAA adds a new definition of serious injury or illness to the FMLA which expands military caregiver leave coverage to those conditions that “existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces.” With respect to veterans, the serious injury or illness may manifest itself before or after the member becomes a veteran.

## 3. Expanding Scope of Exigency Leave

The NDAA expands eligibility for exigency leave to those families of the regular Armed Forces, and not just

with respect to those who serve in the National Guard or Reserves. The new law also removes the 2008 Amendments’ requirement that the covered service-member serve in support of a contingency operation.

## Employer Action

Because the NDAA’s changes to the FMLA are effective immediately, employers should act now to update their existing FMLA policies and to notify employees about these changes.

If you would like further information regarding the recent changes to the FMLA, or your Company’s FMLA policy in general, please contact a member of Blank Rome LLP’s Employment Benefits and Labor Practice Group. ■

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