

The FMLA Changes...Again -- Immediate Employer Action Required

On October 28, 2009, President Obama signed the 2010 National Defense Authorization Act for Fiscal Year 2010, amending the Family and Medical Leave Act for a second time within two years. The amendments are effective immediately.

Pursuant to the 2009 amendments, qualifying exigency leave is now extended to eligible family members of "covered military members" on "covered active duty." "Covered active duty" means: (1) for members of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (2) for members of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty. Under the prior amendments, families of service members in the Regular Armed Forces had not been eligible for qualifying exigency leave.

In addition, the 2009 amendments expand the definition of "Covered Service Member" for the purpose of "caregiver leave" to include veterans who are undergoing medical treatment, recuperation, or therapy for a serious illness or injury and who were members of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veterans undergo medical treatment, recuperation, or therapy. Moreover, the definition of a "serious illness or injury" for the purpose of "caregiver leave" has been expanded to include an illness or injury that existed before the beginning of the member's active duty, which was aggravated by service in the line of duty on active duty in the Armed Forces. And, in the case of a veteran, the qualifying illness or injury may manifest itself either before or after the service member becomes a veteran. Under the prior amendments, the definition of "Covered Service Member" did not include veterans under any circumstances.

In sum, the amendments expanding the qualifying exigency leave provisions result, potentially, in a greater number of employees who may be eligible for qualifying exigency leave. And, eligible employees may be entitled to up to 26 weeks of leave to care for Covered Service Members who suffer from conditions such as post-traumatic stress disorder or other mental or physical health conditions, which may not manifest until months or years after service is complete.

Because the amendments became effective on October 28, employers need to promptly update their FMLA policies.

For assistance with FMLA policies or questions about the FMLA in general, please contact Post & Schell, P.C. Labor and Employment Attorney Claudia Williams. Claudia can be reached at 717-612-6021 or cwilliams@postschell.com.

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