



Labor & Employment Legal Alert: First Expansion of Family and Medical Leave Act (FMLA) since 1993, signed by President Bush

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The National Defense Authorization Act for 2008, signed by President Bush on January 28, includes the first expansion of the Family and Medical Leave Act, since 1993, the year the law was enacted. Previously, Family and Medical Leave provided qualified employees with up to 12 weeks of unpaid leave in certain circumstances. These circumstances are (1) the birth of a child and to care for the newborn child; (2) The placement of a child with the employee through adoption or foster care and to care for the child; (3) to care for the employee's spouse, son, daughter, or parent with a serious health care condition; and (4) a serious health condition makes the employee unable to perform one or more of the essential functions of his or her job.

The Act signed by President Bush modifies the FMLA in several ways. First, the law modifies the FMLA by adding a new qualifying event for the twelve (12) weeks of FMLA leave, known as a "qualifying exigency". The new qualifying exigency event arises out of the fact that an employee's spouse, child or parent is on active duty or has been notified of an impending call or order to active duty in the armed forces in support of a contingency operation. What is and isn't a qualifying exigency is yet to be determined by the Secretary of Defense. According to the new law, the employee must provide the employer with "reasonable and practicable" notice when an employee requests leave for a qualifying exigency and the necessity for the leave is foreseeable.

In addition, the law now provides that the spouse, child, parent, or next-of-kin (defined as the "nearest blood relative") of a "covered service member" is entitled to a total of twenty-six (26) work weeks of leave during a twelve (12)-month period to care for the service member. Fortunately, the law provides an extensive definitional section providing some direction as to what is a covered service member and serious illness or injury. Specifically, the law provides "covered service member" means a service member who is "undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." "Serious illness or injury" is defined as a condition that may render the service member "medically unfit to perform the duties of the member's office, grade, rank, or rating." The leave to care for an injured service member is only available during a single twelve (12)-month period, and the twenty-six (26)-week limit would include any leave granted pursuant to the new qualifying exigency provision, set forth above.

It is anticipated the Department of Labor will issue regulations clarifying some of the concepts contained in this Amendment. However, the Amendment to the FMLA were effective upon the President's signature. Therefore, please be advised that employers are required to comply with the new provisions regardless of whether the Department of Labor issues any regulations. Thus, employers need to immediately review FMLA policies and determine what revisions will be necessary to comply with the new law.

We will continue to keep you updated on the status of this legislation. If you have any questions, please contact attorney Scott M. Zurakowski, szurakowski@kwgd.com or Leslie Iams Kuntz, likuntz@kwgd.com at Krugliak, Wilkins, Griffiths & Dougherty Co., L.P.A. at 330-497-0700.

NOTE: This general summary of the law should not be used to solve individual problems since slight changes in the fact situation may require a material variance in the applicable legal advice.

