

Family and Medical Leave Act

Military Family Leave

On January 28, 2008, President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008. A section of this Act amended Family Medical Leave Act to provide eligible employees two new leave rights related to military service. The two new leave rights are summarized below:

- **New Qualifying Reason for Leave:** Eligible employees are entitled to up to 12 weeks of leave because of “**any qualifying exigency**” arising out of the fact that the spouse, child or parent to the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation.

“**Qualifying exigency**” is not defined in the law. That job has been left to the Department of Labor. The DOL has not yet issued regulations on it, but has offered *examples* of “qualifying exigency” which include:

- *Making arrangements for childcare required due to the service member’s absence.
- *Making financial and legal arrangements to address the service member’s absence.
- *Attending counseling related to the service member’s active duty.
- *Attending official ceremonies or programs where the military requests participation of the family member.
- *Attending to farewell or arrival arrangements for the service member.
- *Attending affairs caused by the missing status or death of the service member.

If the need for leave is foreseeable, the employee must provide the employer with “reasonable and practicable” notice, and the employer may require supporting documentation.

Although this portion of the Military Family Leave does not officially go into effect until the DOL issues regulations defining “qualifying exigency”, employers are encouraged to provide this type of leave to qualifying employees immediately.

- **New Leave Entitlement:** Eligible employees who are the spouse, child, parent or “next of kin” of a covered service member who is recovering from a serious illness or injury sustained in the line of duty on active duty are permitted to take up to **26 weeks** of leave in a single 12 month period to care for the service member. (This differs from the 12 weeks for a non-service serious health condition of a family member).

The definition of “a serious illness or injury” under this provision is much broader than the definition under the FMLA. Serious illness or injury under this provision is defined as one incurred in the line of duty that renders the service member medically unfit to perform the duties of his/her office, grade, rank or rating. This provision became effective immediately upon enactment.

Additional information on the amendments can be found on the FMLA amendments Web Site at:
http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm