

Recent Amendment of FMLA Servicemember Leaves of Absence
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As part of the National Defense Authorization Act for fiscal year 2008, Congress amended the Family and Medical Leave Act to provide additional job-protected leave rights to (i) employees who provide care to family members in military service who have a serious injury or illness, and (ii) employees who need time off from work in connection with certain "qualifying exigencies" because a family member in military service is being called to active duty and/or is being deployed in support of a "contingency operation" (currently limited to Iraq and Afghanistan). However, the FMLA military leave provisions initially only covered circumstances where an employee's family member serving in the National Guard or Reserves was called to active duty and deployed in support of a "contingency operation", and where certain retired servicemembers are called to active duty.

On October 28, 2009, President Obama signed into law the National Defense Authorization Act for Fiscal Year 2010 (Public Law No: 111-84). Included in this legislation are amendments to the Family and Medical Leave Act which expand coverage of the FMLA military leave provisions. The amended FMLA now includes:

- An employee entitlement to "qualifying exigency" leave where family members serving in the *regular Armed Forces* are on active duty in a foreign country, or who are being deployed to active duty to a foreign country.
- An employee entitlement to "military caregiver" leave to provide care for family members who are *military veterans* undergoing medical treatment for a serious injury or illness which they incurred while a member of the Armed Forces and within the five years preceding the medical treatment.
- An expanded definition of "serious injury or illness" for members of the Armed Forces (including members of the National Guard or Reserves) that incorporates a serious injury or illness that existed before the beginning of the servicemember's active duty and which was aggravated by service in line of duty on active duty. The same expanded definition of "serious injury or illness" would also apply to certain veterans for the purposes of "military caregiver" leave.

The requirement for FMLA leave that the employee's family member in the Armed Forces be deployed in support of a "contingency operation" has been deleted from the statute.

The amendments to the FMLA became effective immediately upon enactment.

The results of the amendment is a substantial expansion of the circumstances under which employees may qualify for FMLA servicemember leave. For example, deployment of a family member in the Armed Forces on active duty to any foreign country, and not just to Iraq or Afghanistan, could trigger an entitlement to FMLA leave

by an employee if one of the seven U.S. Department of Labor – designated "qualifying exigencies" occurs in connection with that deployment.

It is recommended that covered employers revise their leave of absence policies to permit employees who have family members that are on active duty service to take leave for a qualifying exigency. Previously, only employees whose family members in the National Guard and Reservists were called to active duty in support of a contingency operation were permitted to take a qualifying exigency leave. The leave of absence policy should also be revised to (i) provide military caregiver leave to families of certain veterans who previously were not covered by the provision and (ii) permit military caregiver leave for serious injuries or illnesses that are the result of pre-existing conditions that were aggravated by service while on active duty.

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