

## CASE LAW UPDATE:

### **Family and Medical Leave Act's Military Family Leave Entitlements Expanded**

On October 28, 2009, President Obama signed into law the "[National Defense Authorization Act for Fiscal Year 2010](#)." Incorporated within this law is the Supporting Military Families Act of 2009. Amongst many other things, this new law further expands the exigency and caregiver leave provisions for military families under the Family and Medical Leave Act of 1993 (FMLA).

#### **Brief Background**

The FMLA requires covered employers (50 or more employees) to allow eligible employees (at least 1,250 hours worked in a 12-month period) to take up to 12 work weeks of unpaid leave during any 12-month period in the event of the employee's "serious health condition" or that of a spouse, child, or parent of the employee. The FMLA also applies during the birth, adoption, or foster care placement of an employee's child.

In 2008, the FMLA was expanded to provide unpaid leave to employees for a "qualifying exigency." This expansion covered employee's spouse, children, or parents in the National Guard or Reserves being called to active duty for a "contingency operation." The 2008 amendments to the FMLA define the phrase "qualifying exigencies" to include: (1) short-notice deployment; (2) military events and related activities; (3) childcare and school activities; (4) financial/legal arrangements; (5) counseling; (6) rest and recuperation; (7) post-deployment activities; and (8) other activities an employer/employee agree are covered. This provision was specifically interpreted not to apply to servicemen in the Regular Armed Forces.

The 2008 Amendments also provide leave to eligible employees, including federal civilian employees who are the spouse, son, daughter, parent, or next of kin of a seriously injured service member, in order to care for the service member. The Amendments further extended the amount of leave time available for caregivers of seriously injured service members from 12 workweeks to 26 workweeks. For more information on the 2008 amendments, please see our [previous news alert](#) regarding the Department of Labor's regulations interpreting these amendments.

#### **National Defense Authorization Act for Fiscal Year 2010:**

The National Defense Authorization Act amends the FMLA in two significant ways. As noted above, the 2008 Amendments only applied to employees with a family member in the National Guard or Reserves, as opposed to the Regular Armed Forces. The new

amendments provide coverage for employees with a family member who is either in a regular component of the Armed Forces or a reserve component of the Armed Forces. Employees will now be entitled to leave “because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces.”

The new amendments also extend coverage of service member caregiver leave to include caring for a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Therefore, the FMLA caregiver provisions are no longer restricted to active service members. Under the legislation, the injury or illness could manifest itself before or after the member became a veteran (such as an aggravation of a previous injury or post-traumatic stress disorder).

Employers are advised to immediately review the amendments with managers and human resources personnel to ensure compliance with the amended FMLA.

This Article provides a general overview of new legislation which Sponsler, Bennett, Jacobs & Adams, P.A. deems important to its clients and employers. It is not intended to be, and should not be considered as, legal advice. A labor and employment attorney should be contacted to deal with any specific factual scenario you are facing. For more information, visit [www.sponslerbennett.com](http://www.sponslerbennett.com) or contact your labor and employment attorney.