

Congress Again Expands Military Family Leave Under FMLA

The Family and Medical Leave Act was originally designed to grant eligible employees leave for their own serious medical condition or that of a designated family member. In 2008, Congress expanded the FMLA to provide additional benefits to employees with family members serving in the U.S. Armed Forces. A new FMLA benefit called “Caregiver Leave” was added to permit a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for a “member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.” The 2008 amendments to the FMLA also added a right for “Exigency Leave,” which permitted eligible employees to take leave for “any qualifying exigency . . . arising out of the fact that the spouse, or a son, daughter, or parent of the employee 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.” In its recent passage of the 2010 National Defense Authorization Act (H.R. 2647), Congress again expanded employee rights under the “Caregiver Leave” and “Exigency Leave” provisions added last year.

Caregiver Leave now grants an eligible employee the right to take leave to provide care not only for injured members currently serving in the Armed Forces, but also veterans who are undergoing medical treatment, recuperation, or therapy for a serious injury or illness 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 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. The expanded provision only applies, however, for an injury or illness suffered, or aggravated, by a qualifying veteran while in the line of duty.

In addition, under the 2008 FMLA amendments, “Exigency Leave” was available only to employees with a family member in the National Guard or Reserves. While the definition of “Qualifying Exigency” has not changed (short notice deployments; military events and related activities; childcare and school activities; financial and legal arrangements; counseling; rest and recuperation; post-deployment activities; and other events arising out of a service member’s active duty or call to active duty status), the availability of “Exigency Leave” has now been expanded to include employees with a family member who is part of an active-duty service component.

These provisions took effect upon President Obama’s signature on October 28, 2009. Employers who are covered by the FMLA should be sure to amend their leave policies to comply with these new provisions.

If you would like further information, please contact your Rutan & Tucker attorney. This e-Alert is published periodically by Rutan & Tucker LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only.