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## AMENDMENTS TO THE FAMILY MEDICAL LEAVE ACT ARE EFFECTIVE IMMEDIATELY FOR EMPLOYERS

**On Monday, January 28, 2008, President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008 (NDAA) which amends the Family and Medical Leave Act of 1993 (FMLA) by providing two new leave protections to service members and their families.**

### *Leave to Care for Ill or Injured Service Member*

The new law permits an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member to take up to 26 weeks of leave in a single 12-month period under the FMLA to care for such service member. The new law defines a covered service member as a "member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." For the first time under FMLA, relatives who are not immediate family members are permitted to take this leave if they are considered the covered service member's nearest blood relative, i.e., next of kin.

### *Qualifying Exigency Leave*

The new law also permits an eligible employee to take up to 12 weeks leave during any single 12-month period for any "qualifying exigency" due to the eligible employee's spouse, child, or parent either being on active duty or being notified of an impending call or order to active duty in the armed forces in support of a contingency operation.

### *Effective Dates*

The requirement to provide up to 26 weeks of leave to care for an ill or seriously injured service member became effective January 28, 2008. However, the requirement to provide up to 12 weeks of leave for any "qualifying exigency" is delayed until the Labor Department issues final regulations defining "qualifying exigency." In the interim, the Department is still

encouraging employers to provide some form of emergency leave to their eligible employees.

The Family and Medical Leave Act of 1993 ("FMLA") is a federal law that requires covered employers to grant unpaid leave to qualified employees under certain circumstances. Employers who have 50 or more employees are required to comply with the FMLA. To qualify for FMLA leave, an employee must have worked for the employer for a minimum of 12 months (consecutively or non-consecutively) and worked at least 1,250 hours during the 12-month period immediately preceding the leave.

The new leaves described above are not in addition to an eligible employee's FMLA entitlement for other qualifying reasons. This means that an eligible employee may not take more than 26 weeks of FMLA leave within the applicable 12-month period.

### *Employer Implications*

Employers should be prepared to handle immediate requests for these new leaves. This means that employers need to become familiar with the new law, review their current FMLA policies, and amend these policies as needed. Employers also need to inform their managers and supervisors on the new types of FMLA leave so as to provide correct communication to their workforce. Since guidance regarding qualifying exigency leave is still forthcoming, for the time being, employers will need to comply with requests for this type of leave through a "good faith effort."

Additional information and a copy of Title I of the FMLA, as amended, are available at:

[http://www.dol.gov/esa/whd/fmla/NDAA\\_fmla.htm](http://www.dol.gov/esa/whd/fmla/NDAA_fmla.htm)