

Client Alert



A report for clients and
friends of the Firm

November 2009

New FMLA Requirements

The 2010 National Defense Authorization Act was signed into law by President Obama on October 28, 2009. Among other things, the bill amends the Family and Medical Leave Act of 1993 ("FMLA") by expanding its leave provisions relating to "qualifying exigency leave" and "military caregiver leave." As the 2010 NDAA did not include an effective date when these new leave provisions become effective, we believe that all covered employers must amend their FMLA leave policies and practices immediately.

The new amendments extend "qualifying exigency leave" protections to families of active duty servicemembers deployed abroad so that the families can have time to manage certain personal affairs of the servicemember while s/he is on active duty. Previously, such leave was *not* available to employees whose family member (spouse, child, or parent) was in the regular Armed Forces but, rather, was available only to employees whose family member was in the Reserves or National Guard and who was ordered to active duty as part of a contingency operation. Now, in light of the amendments, FMLA leave is available to covered employees whose spouse, child or parent is in the Armed Forces on active duty *and* who is deployed overseas. Under the 2009 amended FMLA regulations promulgated by the U.S. Department of Labor (DOL), "qualifying exigencies" include time preparing for short notice deployment, arranging for child care, updating financial or legal arrangements, attending counseling, time for rest and recuperation, and post-deployment activities, among other things.

The 2010 NDAA also amended the FMLA to create leave protections for family members of injured veterans who provide military caregiver leave triggering the FMLA's 26-week leave entitlement. Under the amended law, an eligible employee is entitled to 26

weeks of leave to render care to the employee's spouse, child, parent, or next of kin who is a veteran of the Armed Forces if at any time within the five-year period preceding the date on which the veteran undergoes medical treatment, therapy or recuperation for a serious injury or illness the veteran had been an active member of the Armed Forces (including those called to active duty in the Reserves or National Guard). Such leave would apply, as well, to the family member who provides care to a veteran whose injury or illness existed before the servicemember's active deployment and was aggravated by active duty service.

All FMLA policies and practices must be updated to reflect these amendments. This information should be communicated to all managers with decision-making authority concerning leaves of absence. We anticipate that the DOL will eventually update its required FMLA notice forms as well as those relating to certification for protected FMLA leaves.

In the meantime, if you have any questions or require assistance in reviewing or updating your policies, procedures, or Employee Handbook provisions to come into FMLA compliance, please don't hesitate to contact your Proskauer relationship attorney or any of the co-Chairs of Proskauer's Employment Law Counseling and Training Practice Group.

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