

CLIENT ALERT: Two Important Amendments To The Family and Medical Leave Act Recently Enacted

The very recent enactment of the National Defense Authorization Act (“NDAA”) included two important amendments to the Family and Medical Leave Act (“FMLA”):

- * Employees can take up to 26 workweeks of protected leave to care for a seriously injured or ill family member serving in the military.
- * Employees can take up to 12 workweeks of protected leave to deal with emergencies or necessities arising out of a family member’s active duty in the military.

Caring for a family member in the military: Effective immediately, the FMLA has been amended to permit an employee who is the spouse, son, daughter, parent, or next of kin of a member of the Armed Forces, 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 Department of Labor (“DOL”) is “working quickly to prepare more comprehensive guidance” about this expansion of the FMLA. Until then, the DOL requires “employers to act in good faith in providing leave under the new legislation. Because the NDAA amends the FMLA, FMLA-type procedures should be used as may be appropriate (for example, procedures regarding substitution of paid leave and notice).”

Dealing with emergencies or necessities arising out of a family member’s active duty: Though not yet technically in effect, the FMLA has been amended to allow an employee to take up to 12 workweeks of FMLA 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” The amendments do not define “qualifying exigency” but the DOL is

preparing regulations as quickly as possible. This amendment is not effective until the DOL issues regulations, but the DOL encourages employers to provide such leave to qualifying employees. Due to the obvious uncertainty, we suggest you contact employment counsel if confronted with any situation that may be covered by this amendment.

Employers should also be alert to update their FMLA policies to reflect these amendments. Please do not hesitate to contact Jaclyn Kugell, Tracy Thomas Boland, or any attorney at Morgan, Brown & Joy to assist you in doing so or to answer questions about these amendments.

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