

2009 Military FMLA Amendment

In the last two years, the Family and Medical Leave Act (FMLA) and implementing regulations have been revised extensively. In January of 2008, Congress amended the FMLA to provide for exigency leave (up to 12 weeks of leave for an employee to address urgent needs related to a family member—spouse, child, parent—who is in the Reserves or National Guard and called to active duty) and caregiver leave (up to 26 weeks of leave for an employee to care for a family member—spouse, child, parent, “next of kin”— who is seriously injured or becomes seriously ill in the line of active military duty). In January of 2009, the Department of Labor issued regulations regarding those two new types of leaves and to address issues and concerns about other FMLA requirements.

On October 27, 2009, President Obama signed into law the National Defense Authorization Act of 2010, which includes the [“Supporting Military Families Act of 2009”](#) (the “Act”). The Act expands the exigency and caregiver leaves in four important ways:

- First, it broadens exigency leave to include employee leave due to a covered family member being called to active duty (in addition to a call to duty in the National Guard and Reserves);
- Second, it extends exigency leave to include employee leave when a covered family member is called to duty in a foreign country (in addition to when the leave relates to a call to duty in support of a “contingency operation”);
- Third, it expands caregiver leave to include veterans by allowing employee leave to care for a covered family member who is undergoing medical treatment or therapy for, or recuperating from, a serious injury or illness incurred in the line of active duty at any time during a five year period after a veteran leaves active duty; and
- Fourth, it enlarges caregiver leave to include leave due to the aggravation of existing or preexisting injuries incurred in the line of duty while on active duty.

The Department of Labor is expected to issue new regulations regarding these changes, which will then supersede the regulations issued this past January regarding these two types of leaves. However, the law does not include an effective date, which means that it is effective immediately upon the President’s signature (October 27, 2009). Thus, covered employers should update their policies and notify employees of these changes now.

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