

**FMLA COVERAGE EXTENDED TO MILITARY FAMILIES**  
**- MORE CHANGES ON THE WAY**

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On January 28, 2008, the President signed into law an expansion of the Family Medical Leave Act (FMLA) providing for two additional categories of leave, both involving family members of the armed forces. First, spouses, parents, children, or next of kin are allowed up to 26 weeks of leave during a 12-month period to care for recovering military service personnel who develop a serious injury or illness while serving in the armed forces (Caregiver Leave). The second category of leave allows an employee to take up to 12 weeks of leave for "any qualifying exigency" that arises out of the fact that the spouse, son, daughter or parent of the employee is on active duty or has been notified of an impending call or order to active duty (Call to Active Duty Leave).

**Caregiver Leave:** Even though the Department of Labor has not finalized regulatory guidance for employers under the new law, the amendment is effective immediately. An employee is entitled to a maximum of 26 weeks of leave once during a 12-month period. This means that, while an employee may also take 12 weeks of leave for a reason other than military care leave, the total amount that the employee may take (of both military and other FMLA leave) is 26 weeks.

**Call to Active Duty Leave:** An employer may require that a request for leave under this section be supported by a certification issued at such time and in such manner as the Secretary may by regulation prescribe. This "Call to Active Duty" provision will not be effective until the secretary of labor issues final regulations defining "any qualifying exigency."

**General:** FMLA eligibility requirements for employers (generally having 50 or more employees) and employees (including having been employed for 12 months and worked 1,250 or more hours) remain unchanged. The amendment applies to service members in both Reserve and National Guard duty as well as regular forces.

**Proposed Rule:** On February 11, almost fifteen years after the Act was passed, the Department of Labor has responded to repeated calls for clarification of the FMLA by issuing a Proposed Rule covering notice obligations, medical certification, intermittent leave, the substitution of paid time off for unpaid FMLA leave, and other topics. The proposal is open for comment until April 11, and already interest groups have staked out a range of positions on its provisions.

**Practice Pointers:**

- Revise your FMLA policy to incorporate Caregiver Leave for Military Families, and train managers to respond to requests for this kind of leave.
- Be prepared to further revise your policy when the Department of Labor issues final rules on Call to Active Duty Leave, and the general FMLA regulation.

We will keep you abreast of regulatory changes through future E-lerts. Please contact us if you need information about FMLA leave or other employment compliance topics.