

Family And Medical Leave Act Is Expanded By New Law

By Joseph T. Bartulis, Jr., Esq.

In the spring of 1993 then-President Bill Clinton signed into law the Family and Medical Leave Act (FMLA). As most people know, the FMLA provides eligible employees up to twelve weeks of paid or unpaid leave under certain circumstances.

Early this year, President Bush signed into law the National Defense Authorization Act for FY 2008 (NDAA). Contained within Section 585 of the NDAA, that law amends the FMLA in two significant ways. First, the law creates a new qualifying reason for eligible employees to access leave. Under the new law, eligible employees are now entitled to up to twelve weeks of leave because of “any qualifying exigency” which arises out of the fact that his or her “spouse, son, daughter, or parent is on active duty, or has been notified of an impending call to active duty status in support of a contingency operation.”

The second change to the FMLA which occurred as a result of the NDAA was its creation of a new category of leave entitlement. Specifically, it provides that an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member who is recovering from a serious illness or injury sustained in the line of duty shall be entitled to take up to twenty-six workweeks of leave in a single twelve month period to care for a service member. It is referred to in the NDAA as “military caregiver leave.”

Since its inception the FMLA has been frequently misunderstood and misinterpreted by employers and employees alike and questions abound. Among the most common questions are whether the employee can be required to exhaust his or her accrued, paid leave before taking FMLA leave, whether FMLA leave can run concurrent with paid leave or if it is addition to paid leave, and what medical documentation an employer can seek regarding the existence of a “serious medical condition” in light of the Health Insurance Portability and Accountability Act (HIPAA) to name just a few.

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