



Alert

Labor & Employment Client Service Group

To: Our Clients and Friends

November 9, 2009

FMLA Military Leave Provisions Extended

On October 28, 2009, President Obama signed into law amendments to the Family and Medical Leave Act ("FMLA"). The amendments expand the military leave provisions of the FMLA, affecting both qualifying exigency leave and military caregiver leave. The changes do not pertain to the length of available leave, but rather expand the categories of individuals who may be entitled to leave.

Qualifying Exigency Leave

Under the new law, qualifying exigency leave is no longer limited to employees whose covered family member is in the National Guard or Reserves. Instead, such leave is now available to employees whose covered family member is a member of the regular Armed Forces and is on active duty or call to active duty status in a foreign country. The qualifying exigency leave provisions relating to members of the National Guard or Reserves now also incorporate the duty "in a foreign country" language.

Military Caregiver Leave

Under the new law, military caregiver leave is no longer limited to employees whose covered family member is a current member of the Armed Forces (including members of the National Guard or Reserves). Instead, such leave is now available to employees whose covered family member is a veteran, i.e., a person who served in the active military, Naval, or Air Service, and who was discharged or released from such service under conditions other than dishonorable. The employee must be providing care to a veteran: (1) who has a serious injury or illness incurred in the line of duty on active duty in the Armed Forces, or which existed before the beginning of the member's active duty status and was aggravated by service in the line of duty on active duty in the Armed Forces; (2) which manifested itself before or after the member became a veteran; (3) for which the veteran is undergoing medical treatment, recuperation, or therapy. Additionally, the veteran must have been a member of the Armed Forces (including the National Guard or Reserves) at any time during the period of five years preceding the date on which the veteran undergoes the medical treatment, recuperation, or therapy.

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The statutory language relating to the previously existing military caregiver leave for current members of the Armed Forces has been amended slightly as well. In particular, as is the case under leave to care for a veteran, the serious illness or injury now either may have been incurred in the line of duty on active duty in the Armed Forces, or may have existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces. Additionally, clarifying language has been added to indicate that the serious illness or injury is one that renders the member medically unfit to perform the duties of the member's "office, grade, rank, or rating."

Recommended Employer Action

The FMLA amendments went into effect on the date they were signed into law. While employers ultimately will need to revise their handbooks and forms to incorporate the new provisions, employers may want to wait to do so until the Department of Labor revises its regulations, poster, and certification forms. At a minimum, however, employers must take steps now to ensure that individuals involved in FMLA leave administration are familiar with the new provisions.

For information about anything contained in this [Labor and Employment](#) Alert, please speak with your regular Bryan Cave LLP contact, or contact anyone in the Bryan Cave Labor and Employment Client Service Group.