

### President Bush Signs Law to Expand FMLA Leave for Families of Military Service Members

The 2008 National Defense Authorization Act, signed by President Bush on January 28, 2008, has significantly expanded the Family Medical Leave Act (FMLA) for families of military service members. The first major revision to the FMLA since its enactment in 1993, the new law will expand the FMLA in three important ways.

First, the new law will permit an eligible employee to take up to 12 weeks of FMLA leave “because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee” is on or has been called to active duty in the Armed Forces in support of a “contingency operation” (generally a war or similar combat operation). The term “qualifying exigency” is not defined, but will hopefully be explained when the Department of Labor (DOL) publishes implementing regulations in the near future.

Second, an eligible employee who is the primary care giver of a service member with a “serious injury or illness” incurred in the line of active duty may now take up to 26 weeks of FMLA leave in a single 12-month leave year to care for the service member. This more than doubles the eligibility currently permitted under FMLA. A “serious illness or injury” is defined as an illness or injury incurred in the line of duty that may render the service member medically unfit to perform his or her *military* duties. Because this term is different from the FMLA’s prior focus on “serious health conditions,” we anticipate further clarification from the DOL. It also remains to be seen whether the DOL will publish a revised certification form to address this new type of leave.

Third, the law creates a new category of employees entitled to FMLA leave to care for an injured service member. In addition to spouse, son, daughter, or parent, the revised FMLA now permits the “next of kin” to take FMLA leave for this purpose. The term “next of kin” is defined as the nearest blood relative to the service member. Again, there will likely be some confusion over this new category until the DOL provides further clarification.

The new FMLA provisions are effective immediately, and the DOL announced last week that it has already begun drafting new regulations to implement the new provisions.

#### Expansion Is Part of a Broader Trend to Assist Military Families

This expansion of the federal FMLA is part of a nationwide trend to expand the rights of military families with service members who have been called to active duty in the armed forces. Several states have recently enacted similar laws guaranteeing leave to eligible employees in various

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circumstances, such as when a family member is deployed to a military conflict, when a family member is home on leave from a military conflict, or when a family member is injured during such a conflict. California, Illinois, Indiana, Maine, Minnesota, Nebraska and New York are among the states that have recently enacted such laws.

### **DOL Preparing to Issue Proposed FMLA Regulations**

Finally, after years of lobbying by dissatisfied employers, the DOL is finally poised to issue its revised FMLA regulations. The revised regulations have been sent to the Office of Management and Budget (OMB) and, if approved by OMB, the proposed regulations will be published in the *Federal Register* for public comment. After a 60-day public comment period, the DOL will make any necessary revisions and then issue the final regulations.

If you have any questions or would like additional information, please contact your Alston & Bird attorney or one of the following attorneys.

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