

FMLA Rights for Military Servicemember Families and Veterans

October 2009

On October 28, 2009 President Obama signed the Supporting Military Families Act of 2009, which expands the exigency and military caregiver leave provisions of the Family and Medical Leave Act. The changes, which were effective upon the President's signature, now permit employees to take leaves of up to 12 weeks for qualifying exigencies related to an "active duty" spouse, child or parent being deployed to a foreign country. Such exigencies include short-notice deployment, military events, childcare and school activities, financial and legal arrangements, counseling, rest and recuperation, post-deployment activities, and any other service-related activity that the employer and employee agree is a qualifying exigency.

FMLA amendments in 2008 limited such exigency leaves to employees whose covered family members were National Guard or Reserve members called to active duty. Now family members of active duty members being deployed overseas, and those of National Guard and Reserve members called to active duty will be treated the same.

The new amendments also permit employees to take up to 26 weeks of leave to care for wounded members of the Armed Services, whether active duty, National Guard or Reservists, and veterans of each who served within 5 years of the date of medical treatment. The 2008 law required the leave to begin prior to the service member reaching veteran status, whereas now veterans are also covered.

In addition, medical treatments for pre-existing conditions that are aggravated in the line of duty during active duty service now qualify for caregiver leave. Previously, the law only covered leaves to care for injuries initially established during the period of active duty, not those aggravated by military service.

Connecticut employers must also continue to comply with the state FMLA, which was amended in May 2009 (P.A. 09-70) to mirror the 2008 federal military caregiver, but not exigency leave amendments. It is reasonable to think that the expanded military caregiver rights will apply under state law as well, but the state has not yet responded to these most recent federal changes so a careful analysis should be undertaken when a request for military caregiver leave is received.

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