Family And Medical Leave Act Expanded

For the first time since it was passed, the Family and Medical Leave Act ("FMLA") has been amended to expand coverage. The National Defense Authorization Act for Fiscal Year 2008 ("NDAA"), H.R. 4986, signed into law by President Bush on January 28, 2008, amends the FMLA to require employers to provide additional and, in some circumstances, lengthier leave to the family of members of the armed forces.

The FMLA, originally enacted in 1993, requires covered employers to allow employees up to 12 workweeks of unpaid leave for the birth of a child; for the adoption or foster placement of a child; to care for a spouse, son, daughter or parent with a serious health condition; or because of the employee's own serious health condition. Importantly, any employee taking leave under the FMLA also is entitled to reinstatement to the same or to a substantially similar position at the expiration of his or her leave period.

The NDAA adds to this framework by creating a special provision for employees seeking 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 active duty." Additionally, the NDAA adds a new provision entitled "Servicemember Family Leave," which requires that an employer allow a "spouse, son, daughter, parent, or next of kin" up to 26 workweeks of leave to care for a "Covered Servicemember."

The secretary of labor is currently working on regulations to define "qualifying exigency," and therefore, the implications of this portion of the amendment cannot be fully predicted. However, the "Servicemember Family Leave" provision is effective immediately, and in addition to increasing the maximum leave period from 12 weeks to 26 weeks for leave covered by its terms, it defines a "Covered Servicemember" expansively to include any member of the armed forces, National Guard or reserves "who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for serious injury or illness."

Because this definition is significantly broader than the definition of a "serious health condition," family members of servicemembers will be entitled to leave in a greater number of situations under this provision.

What Does This Mean For Employers?

It will be important for employers to update company policies and to educate managers and human resources personnel on the FMLA's expanded scope. Employers also need to plan for the impact of increased leave periods, given that employees taking FMLA leave must be reinstated to the same or to a substantially similar position at the expiration of his or her leave period.

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