

## **NEW CHANGES IN FAMILY MEDICAL LEAVE FOR MILITARY PERSONNEL AND THEIR FAMILIES**

As we know, the Federal Family and Medical Leave Act (FMLA) requires employers of 50 or more to grant employees up to 12 weeks a year of leave to attend to serious health conditions of themselves or their family members. "Family member" is defined as a spouse, parent or child of the employee.

On January 28, 2008, President Bush signed a law that adds two new conditions under which qualifying employees can take FMLA leave. This law, called the National Defense Authorization Act (NDAA), requires employers to grant FMLA leave in these situations:

### **"Qualifying Exigencies" Related to Active Duty**

An otherwise-qualified employee can take up to 12 weeks of FMLA leave if he or she has a family member who is either serving on active duty or receives notification of an impending call or order to report to active duty in support of a "qualifying exigency."

The NDAA does not define what a "qualifying exigency" is. In addition, this part of the law will not be effective until the U.S. Department of Labor (DOL) issues regulations that specifically clarify what this term means. The DOL has indicated that they will issue these regulations as soon as possible, but they are encouraging employers in the meantime to grant this leave if requested.

### **Service Member Leave for Injured or Ill Family Member**

This part of NDAA, which went into effect on January 28, 2008, allows otherwise qualified employees to take FMLA leave to care for a spouse, child, parent or next of kin who is a member of the Armed Forces and is undergoing medical treatment, recuperation, or therapy for a serious injury or illness incurred while on active duty. However, unlike other FMLA leave, an employee can take up to 26 weeks of leave in a 12 month period to care for the recovering family member. The employee is then not eligible for any other FMLA leave during that leave year.

Employers should keep in mind that the Oregon Family Leave Act (OFLA) has not been similarly amended. Therefore, unless one of the above-stated leaves also qualifies as a serious health condition under OFLA, the employer cannot count it towards the employee's bank of OFLA leave.

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