

Tuesday, November 17, 2009

## Labor and Employment Update: New Law Expands FMLA Leave for Families of Military Members

By Donald R. Gilbert and Monica M. Ryden

On October 28, 2009, President Obama signed into law the National Defense Authorization Act of 2010 (NDAA). The law contains changes to the relatively new military leave provisions of the Family and Medical Leave Act of 1993 (FMLA), which became effective in January of this year, expanding the situations in which employees may take military caregiver leave and qualifying exigency leave. These changes will require additional updates to employers' FMLA policies for the second time this year.

The NDAA enacts several major changes to FMLA's military leave provisions:

### Changes to Military Caregiver Leave (also known as Covered Servicemember Leave)

The notable changes for military caregiver leave include:

- Coverage for Veterans. Eligible employees are able to take up to 26 weeks of job-protected leave in a "single 12-month period" to care for family members who are "covered servicemembers" of the Armed Forces, National Guard, or Reserves and who undergo medical treatment, recuperation, or therapy for a serious injury or illness incurred in the line of duty on active duty. The prior law applied only to current members of the Armed Forces, National Guard, or Reserves. A "covered servicemember," under the new law, includes both current members and veterans who have been out of the service for 5 years or less.
- Coverage for Aggravations of Existing or Preexisting Injuries and Illnesses. Military caregiver leave is expanded also to cover aggravation of existing or preexisting injuries or illnesses incurred in the line of duty while on active duty. The prior law's definition of "serious injury or illness" included only injury or illness that was incurred by the covered servicemember in the line of duty on active duty.

### Changes to Leave for Qualifying Exigencies for Families of Military Members

The notable changes for qualified exigency leave include:

- Eligible Employees Whose Family Members in the Regular Armed Forces are Deployed to a Foreign Country are Now Eligible for Exigency Leave. Eligible employees are able to take up to 12 weeks of job-protected leave in a 12-month period for any "qualifying exigency" because a family member who is a member

## quick links

- [Labor and Employment Practice](#)
- [Unsubscribe](#)
- [Acrobat Reader](#)

Phoenix  
3003 N. Central Ave.  
Suite 2600  
Phoenix, AZ 85012  
(602) 916-5000

Tucson  
One S. Church Ave.  
Suite 1000  
Tucson, AZ 85701  
(520) 879-6800

Nogales  
420 W. Mariposa Rd.  
Suite 200  
Nogales, AZ 85621  
(520) 281-3480

Las Vegas  
300 S. Fourth St.  
Suite 1400  
Las Vegas, NV 89101  
(702) 692-8000

Denver  
1700 Lincoln  
Suite 2900  
Denver, CO 80203  
(303) 291-3200

of the Reserves, National Guard, or regular Armed Forces is on active duty in a foreign country, or because of notification of an impending call or order to active duty in a foreign country. Under the prior law, qualifying exigency leave was available only to eligible members of the National Guard or Reserves.

- Civilian Employees of the Federal Government are Now Eligible for Exigency Leave. The new law extends qualified exigency leave to civilian employees of the federal government. Under the prior law, federal employees did not have the right to take qualifying exigency leave.

## These Changes May Be Effective Immediately

The legislation does not include an effective date, suggesting that it took effect immediately upon the President's signature. Even as we await new regulations, employers will need to train their human resource personnel and supervisors on the new FMLA requirements, review and revise their current FMLA policies and practices to ensure that they are in compliance with these new requirements, and update their FMLA forms and notice postings.

## Employers Should Update Their Employee Handbooks to Reflect These FMLA Changes

U.S. Department of Labor regulations require that employers that have employee handbooks notify employees about their entitlements and employee obligations under FMLA in the handbook. Employers will want to review and revise their employee handbooks to ensure that they are in compliance with these new requirements

*Donald R. Gilbert co-chairs the firm's employment and labor practice. He has represented clients in connection with a broad range of employment-related issues before the NLRB, the EEOC, the Department of Labor, the Arizona Civil Rights Division and the Arizona Department of Economic Security. He has tried more than 100 labor arbitrations, and has litigated employment disputes in both state and federal courts. He earned his B.A. (1968) from Stanford University and his J.D. (1971) from the University of California.*

*Monica M. Ryden practices labor and employment and general commercial litigation. She has represented clients before the EEOC and counseled employers on a variety of matters including personnel policies, employee handbooks, training, hiring, terminations, and OSHA issues. She has also tried arbitrations, and has litigated disputes in both state and federal courts. She earned her B.A. (1999) and her J.D. (2005) from Arizona State University.*



Donald R. Gilbert  
Director  
602.916.5306  
dgilbert@fclaw.com



Monica M. Ryden  
Associate  
602.916.5363  
mryden@fclaw.com