

### Congress Authorizes Expansion of FMLA Rights

In the first expansion of the Family and Medical Leave Act (FMLA) since its original enactment in 1993, both houses of Congress have approved legislation that would grant unpaid leave to family members of military personnel in certain circumstances. The legislation is an amendment to the National Defense Authorization Act and is expected to be signed into law by President Bush within the next few days. It was approved by the House of Representatives on December 12 and by the Senate on December 14.

The legislation will provide employment protections to family of service members in two key ways:

-- Active Duty Leave. This benefit allows a spouse, son, daughter or parent of an active duty service member to take up to 12 weeks of unpaid leave for "any qualifying exigency" arising out of the active duty. The legislation delegates to the Secretary of Labor to define "qualifying exigency" in future regulations.

-- Caregiver Leave. This benefit allows a spouse, son, daughter, parent or next of kin of an injured member of the armed forces to take up to 26 weeks of unpaid leave during a single 12 month period to care for the injured service member. "Next of kin" is defined as the nearest blood relative of the service member.

The legislation contains provisions regarding notice to the employer and certification requirements that are similar to those in the existing FMLA statute.

Unfortunately, the FMLA amendment does not contain an effective date, so the new provisions are arguably effective immediately upon the signature of the President, although it will likely be several months before the Department of Labor issues implementing regulations. Employers should be aware of these changes and should consider providing these additional leave benefits immediately, even before the regulations are issued.

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