



February 19, 2008

## Employment Alert

### **FMLA Expanded to Provide Protected Leave for Military Families**

On January 28, 2008, the Family and Medical Leave Act ("FMLA") was expanded in order to provide protected FMLA leave for employees: (1) who have a qualifying exigency due to a family member's active duty service or call to active duty service, and (2) who need leave in order to care for family members wounded during military service (Military Caregiver Leave). The FMLA applies to employers with 50 or more employees.

#### **Qualifying Exigency/Active Duty Leave**

Employers must provide up to 12 weeks of FMLA leave for "any qualifying exigency" resulting from the fact that a spouse, child, or parent is on active duty, or notified of any impending call to active duty, in the Armed Forces in support of a military operation or national emergency. The Secretary of the United States Department of Labor will issue regulations defining what "qualifying exigency" means. In the interim, employers are encouraged to provide this kind of leave and to contact legal counsel when you have questions.

#### **Military Caregiver Leave**

Immediate family members (spouses, parents and children) as well as next of kin (nearest living blood relative) of a servicemember who suffers a serious injury or illness while in military service are entitled to take up to 26 weeks of FMLA leave to care for that servicemember during a 12-month period. The expanded leave to care for injured servicemembers is only available during a single 12-month period.

### **DOL Issues Proposed FMLA Regulations**

Following comprehensive study of FMLA administration, the DOL has issued proposed FMLA regulations that, if enacted, will change a number of current rules. The proposed rules address what constitutes a serious health condition, intermittent leave, notice requirements, bonuses, substitution of paid leave and other issues. The proposed rules are not in effect. However, it is widely anticipated that the DOL will issue final rules following full consideration of comments on the proposed rules.

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### To Do:

- Make a good faith attempt to comply with the law providing leave for a qualifying exigency.
- Immediately comply with the requirements for Military Caregiver Leave.
- Amend your FMLA policy to provide that the company will provide up to 26 weeks of leave to care for a family member whose injury or illness was incurred in the line of duty on active duty in the Armed Forces, National Guard or Reserves.
- Consider posting the optional poster insert provided by the DOL where notices for employees are customarily placed. You may obtain the insert at <http://www.dol.gov/esa/whd/fmla/NDAAAmndmnts.pdf>.

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