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Issue

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NEW FMLA ENTITLEMENTS

On January 28, 2008, President Bush signed into law the National Defense Authorization Act for 2008. The signing is the first expansion of the Family and Medical Leave Act (FMLA) and adds two new FMLA-qualifying events. The new FMLA entitlements are addressed specifically within Section 585 of the National Defense Authorization Act of 2008.

The new FMLA entitlements include the following:

1. **New Qualifying Reason for Leave.** Eligible employees are entitled to up to **12 workweeks** of **unpaid** leave because of “any qualifying exigency” arising out of the fact that a spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call to active duty status, in support of a contingency operation. By the terms of the statute, this provision requires the Secretary of Labor to issue regulations defining “any qualifying exigency.” Until then, employers are encouraged to provide this type of leave to qualifying employees.

Important note: The Secretary of Labor may provide guidelines for employers to require certifications confirming “qualifying exigency.” Such guidelines have not been provided at this time.

2. **New Leave Entitlement.** An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered servicemember who is recovering from a serious illness or injury sustained in the line of duty on active duty is entitled to up to **26 workweeks** of **unpaid** leave in a single 12-month period to care for the servicemember. This provision became effective immediately upon enactment (January 28, 2008). This military caregiver leave is available during “a single 12-month period” during which an eligible employee is entitled to a **combined total** of 26 workweeks of all types of FMLA leave.

Important note: Employers may require certifications which confirm an employee’s family member has a qualifying injury incurred in the line of duty on active duty. At this time, until additional guidelines become available, employers may use or modify the DOL WH 380 form.

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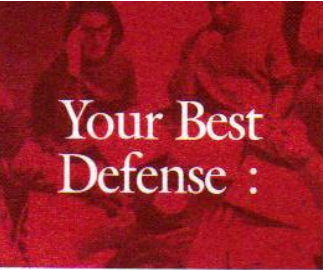
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Recommended Next Steps for Employers:

1. Amend your current FMLA policies to add the two new FMLA-qualifying events. Current clients will receive a FMLA amendment, describing the recent changes, to include in their policy handbook.
2. Decide whether your organization will provide “qualifying exigency” leave or wait until the Secretary of Labor issues more defined guidelines to the new entitlement.
3. Train management on the new entitlements, ensuring your organization is compliant with the law.
4. Comply with the FMLA “General” notice policies. Employees must be informed of the two new FMLA-qualifying events.
5. Modify questionnaires concerning “covered family relations.” Have employees, in advance, identify what family members are spouse, parent, son, daughter, and what individuals are considered “next of kin*.”
6. Be prepared for employees who take the new FMLA-qualifying leave. Employers may be left with employees being gone for 12-26 workweeks.

Waggoner, Irwin, Scheele & Associates are prepared to help your organization with the new FMLA entitlements. Whether you need guidance amending your current FMLA policies or assistance “filling in the gaps,” our knowledgeable consultants can provide the valuable insight you need to move forward.

Please contact Kent Irwin with specific questions at 765.286.5195.

News and updates regarding the two new FMLA-qualifying events will be posted on our website: www.wisconsultants.com

*Nearest blood relative of the servicemember (i.e. brothers, sisters, aunts, uncles, and/or grandparents)