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LABOR AND EMPLOYMENT BULLETIN

February 1, 2008

FMLA RIGHTS EXPANDED FOR MILITARY FAMILIES

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for fiscal year 2008. The new law provides military families more generous benefits under the Medical Leave Act (“FMLA”) by expanding existing benefits and by creating an entirely new basis for an employee to qualify for FMLA leave.

Under prior law, an eligible employee could take up to 12 weeks of FMLA leave to care for a spouse, parent or child who was a member of the armed services and who had “serious health condition.” The new law makes three changes relating to FMLA leave to care for an injured soldier: (1) the 12-week period has been extended to 26 weeks; (2) eligible employees have been expanded to include “next of kin”; and (3) the “serious health condition” requirement has been replaced with a requirement that the service member must have a “serious injury or illness,” which is defined as “an injury or illness incurred by the member in line of duty on active in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.” The amendments providing 26 weeks of caretaker leave for service members are effective immediately.

The other significant change is that the law adds another eligible category to the existing reasons for FMLA leave (birth or adoption of a child; serious health condition of an employee, or serious health condition of an immediate family member). Eligible employees may now take up to 12 weeks of FMLA leave for a “qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending



call or order to active duty).” This portion of the law will not take effect until the Department of Labor issues new regulations defining a “qualifying exigency.” We expect the Department of Labor to move swiftly, and will inform you when further guidance is available.

In response to these amendments, employers should immediately begin modifying their FMLA policies, handbooks, certifications, time keeping processes, and notices to be in compliance with the FMLA amendments.

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