

EMPLOYMENT LAW

A L E R T

NEWS FOR THE CLIENTS AND FRIENDS OF BASS, BERRY & SIMS PLC

National Defense Authorization Act of 2010 - FMLA Amendment

November 4, 2009

The National Defense Authorization Act of 2010 was signed into law by President Obama on October 28, 2009. Although the law deals mainly with defense appropriations, it also includes amendments to the Family and Medical Leave Act (FMLA) which affect the obligations of employers to provide leave for the families of military members. The amendments in this law are effective immediately upon passage.

“Exigency” Leave

Previously, the FMLA has provided up to 12 weeks of job-protected leave made necessary by any “qualifying exigency” arising out of the fact that an employee’s spouse, child, or parent is on active duty or has been called to active duty “in support of a contingency operation.” Although there is no change or additional guidance as to what constitutes a “qualifying exigency,” the amendment removes the requirement that military duty be in support of a “contingency operation,” and replaces the phrase “active duty” with the phrase “covered active duty.” “Covered active duty” is defined to include any deployment of an Armed Service member to a foreign country and any deployment of an Armed Service reservist to a foreign country under a call or order to active duty. Essentially, the amendment clarifies that FMLA’s requirement to provide exigency leave applies only to non-domestic military service and applies equally to the families of active duty military and reservists (when called to active duty).

Injured Servicemember Leave

The FMLA also provides up to 26 weeks of job-protected leave to care for a military servicemember who requires care as a result of an injury or illness incurred in the line of duty. The amendment expands the definition of “covered servicemember” to include, in addition to current members of the armed forces, veterans who are undergoing medical treatment for a serious injury or illness sustained in the line of duty and who were members of the armed forces within five years preceding the need for such medical treatment.

Although these amendments are relatively minor, they may require revision of your FMLA policies. If you have any questions about this alert, please call one of our labor attorneys listed below.

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