

Family & Medical Leave Act Update

McGohan Brabender has learned that on January 28, 2008 President Bush signed the National Defense Authorization Act for Fiscal Year 2008 (H.R. 4986). This includes provisions that will amend the 1993 Family and Medical Leave Act (FMLA) to allow eligible employees to use leave in certain circumstances when their spouse, child or parent is called for active duty or injured as a result of that service. The bill takes effect immediately.

One of the FMLA-related provisions in the legislation will allow employees to take up to 26 weeks per year to care for an injured service member. This provision also creates a new category of "eligible employees" entitled to FMLA leave. In addition to spouse, son, daughter or parent, the legislation will permit someone who is the "next of kin" to take FMLA leave for this purpose. Next of kin is defined as the nearest blood relative to the service member. Leave may be taken to care for "covered" service members defined as those who are members of the Armed Forces, including the

National Guard or Reserves, who have suffered a serious injury or illness in the line of duty while on active duty that may render the service member medically unfit to perform the duties of the service member's office, grade, rank or rating, and who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

Additionally the legislation provides a provision that will allow up to 12 weeks of leave because of any "qualifying exigency" arising out of the fact that the eligible employee's spouse, child or parent is on active duty or has been notified of an impending order to active duty. The Department of Labor (DOL) has drafted new regulations and guidelines for the new FMLA provisions, as well as defining such terms as "qualifying exigency", but until they have been published, employers are encouraged to interpret them broadly. An employer may require that a request for such a leave be supported by certification showing that the service member has been called to active duty. Several states including California, Illinois, Indiana, Maine, Minnesota, Nebraska and New York have passed state family military leave acts that may be somewhat different than the new federal law.

Because the new legislation amends the 1993 FMLA statute, all other FMLA requirements and provisions such as eligibility, continuous or intermittent leave, substitution of paid leave, reinstatement and continuation of group health plan coverage during leave applies to the new provisions.

If you have any questions, please contact your McGohan Brabender Account Representative at (800) 293-2347.