

FMLA amended under 2008 National Defense Authorization Act

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The Family & Medical Leave Act (FMLA) provides eligible employees of covered employers up to 12 work weeks of unpaid leave during any 12 month period for certain qualifying events. Until recently, those events only included the following:

- 1) a parent's birth and care of a newborn child
- 2) placement of a child for foster care or adoption
- 3) care for a spouse, child, or parent with a serious health condition
- 4) an employee's own serious health condition

These qualifying events were expanded under the 2008 **National Defense Authorization Act (NDAA)**, which was enacted in January 2008.

The **first new category** of eligibility for up to 12 weeks of FMLA leave applies to employees who request leave based on a **qualifying exigency** arising out of the active military duty of a parent, child or spouse of that employee. Qualifying exigency has not yet been defined. By its express terms, this provision of the NDAA is not effective until the Secretary of Labor issues final regulations defining qualifying exigency.

The **second new category** allows up to **26 weeks** of FMLA leave by an employee to care for spouse, child, parent or next of kin who is a **covered service member**. These 26 weeks of leave can be taken within a single 12 month period.

Up to 26 weeks of leave can be taken to care for any of the covered relatives if that person is a member of armed forces (including the National Guard or reserves). Leave can only be taken if that service member has suffered a serious injury or illness that was incurred **in the line of duty**, while the service member was on active duty.

Serious injury or illness is defined as rendering the service member **unfit to perform the duties** of the person's office, grade, rank or rating. In addition, the service member must meet one of the following requirements:

- 1) undergoing medical treatment, recuperation, or therapy
- 2) otherwise on outpatient status OR
- 3) otherwise on temporary disability retired list

Just as with other types of FMLA leave, an employee can bring a claim against an employer if the employer denies leave for which the employee is eligible under these new qualifying events. In addition, the employee is entitled to return to work from leave for these new reasons, to the same or an equivalent job, with equivalent pay and benefits (unless the employee is deemed a key employee).

More changes to the interpretation of the FMLA are expected. On February 11, 2008, the Department of Labor published proposed revisions to the regulations interpreting the FMLA. These proposed regulations include a clarification of the definition of a “serious health condition” based on 2 visits to a health care provider and the content of both employer and employee notifications regarding the use of leave. The Notice of Proposed Rulemaking from the Federal Register can be accessed at <http://www.dol.gov/esa/whd/fmla/FedRegNPRM.pdf>. Commenters are encouraged to submit their comments electronically through the Federal eRulemaking Portal at <http://www.regulations.gov> until 12:00 midnight April 11, 2008.

To learn more about employers’ obligations under the FMLA, consider signing up for SLIR’s **new online course on the FMLA**. For more information about this online course, please contact Client Services at slir@msu.edu, or call (517) 353-3123.

For information about programs presented by Human Resources Education & Training Center and by the Workers’ Compensation Center of the School of Labor and Industrial Relations at Michigan State University visit <http://www.lir.msu.edu/hretc>