



BENEFIT NEWS BRIEFS

New Law Changes FMLA Leave for Military-Related Needs

A recently passed law (H.R. 2647), contained changes to the *Family and Medical Leave Act (FMLA)*. The law, the *National Defense Authorization Act for Fiscal Year 2010 (NDAA 2010)*, expands FMLA provisions relating to “qualifying exigency leave” and “military caregiver leave”, both of which types of leave now include time off for qualifying employees to use FMLA leave to care for veterans and not just active service members. The changes apply not only to the employee’s family members who are reservists and National Guard members, but also to family members in the regular armed forces.

See [Benefits News Briefs 2008-5](#) to review the provisions of the law prior to the passage of *NDAA 2010*. An excerpt of the *NDAA 2010* section that addresses FMLA leave for service members or their families is available by “[clicking here](#).”

The law provides for the Secretary of Labor to promulgate implementing regulations. Until that time, employers and affected group health plans should administer their FMLA leave rules in compliance with the terms of the new law. Health plans may need to amend the section on FMLA leave in their Plan Document, if any. The same holds true for Summary Plan Descriptions. FMLA sections written in broad terms without details will probably not need revision, but those FMLA sections written in detail may need to be revised to reflect the recent changes.

Changes to “Qualifying Exigency Leave”

Prior to this change, an FMLA eligible employee could take FMLA leave due to any “qualifying exigency” arising from the employee’s spouse, child or parent being on *active duty* or *called to active duty* in the National Guard or as a reservist in the Armed Forces in support of a military “contingency operation.” “Qualifying exigencies” included leave to address issues surrounding short-notice deployment, military events and related activities, childcare and related activities, financial and legal activities, counseling, rest and recuperation, and post-deployment activities.

The new law modified the term “qualifying exigencies” as it relates to FMLA leave. “Qualifying exigencies leave” is now available for family members of *any regular component of the Armed Forces*, not just to family members of National Guard members or reservists.

The new law also modified how FMLA leave for how a qualifying exigency is triggered. An eligible employee whose spouse, parent or child is a member of the Armed Forces may take FMLA leave for a qualifying exigency related to the fact that they are being deployed with the Armed Forces to a *foreign country*. Previously, such leave was triggered by a family member being on active duty or called to active duty in support of a military "contingency operation." The new law deletes the "contingency operation" language and replaces the old definition of "active duty" with a new definition of "covered active duty" which includes the "deployment to a foreign country."

Expansion of Military Caregiver Leave

The 2008 revisions to the FMLA required employers to allow eligible employees to take up to a total of 26 weeks of leave to care for a covered servicemember during a single 12-month period. A "covered servicemember" was defined as a *current* member of the Armed Forces, including a member of the National Guard or Reserves, with a *serious injury or illness* incurred in the line of duty while on active duty. Now, the term "covered servicemember" is defined to include veterans with a serious injury or illness. A veteran is considered a covered servicemember if:

- The individual is undergoing medical treatment, recuperation or therapy for a serious injury or illness that was incurred or aggravated while on active duty in the Armed Forces, whether or not the illness or injury manifested itself before or after the member became a veteran.
- The individual was a member of the Armed Forces, National Guard or Reserves at any time during the five-year period before he or she began treatment, recuperation or therapy.

The law also expanded the definition of "serious injury or illness" to include care for covered servicemembers whose pre-existing injury or illness was *aggravated* in the line of duty; whereas, before the serious injury or illness had to be *incurred* while on active duty.

More information on FMLA leave can be found on the DOL website at: <http://www.dol.gov/whd/fmla/index.htm>.

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2009 Cumulative List of Changes Released

As we went to press, the IRS just released the 2009 Cumulative List of Changes in Plan Qualification Requirements in *IRS Notice 2009-98*, available by "[clicking here](#)." The *2009 Cumulative List* will be used primarily by plan sponsors of individually designed plans that are in Cycle E, which also includes non-calendar year multiemployer pension plans who are allowed to file in Cycle E instead of Cycle D, as noted on page 2 of the Cumulative List. For background on the use of Cumulative Lists, see [Special Bulletin 2008-63](#).

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