

ClientAlert

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FMLA's Military Leave Provisions Expanded

Just when employers thought they were finished updating their Family and Medical Leave Act ("FMLA") policies to comply with the military-related leave provisions enacted in January 2008 and the new FMLA regulations that became effective in January 2009, President Obama recently signed into law the National Defense Authorization Act for Fiscal Year 2010 (the "NDA Act"). The NDA Act amends the FMLA to expand the military-related leave rights enacted in January 2008. While the NDA Act is silent as to the effective date of these changes, these changes may be effective immediately. It is unclear whether the Department of Labor will give employers a "grace period" to comply with these changes. As a result, employers should promptly update their FMLA policies and train their human resources personnel accordingly. A brief description of these changes follows.

The NDA Act increases the number of employees who may become eligible to take "qualifying exigency" leave under the FMLA. Qualifying exigency leave is designed to allow close family members of military service members to take time off from work to handle certain personal matters that arise as a result of a service member's deployment. (The recently effective FMLA regulations contain a list of "qualifying exigencies.") The NDA Act allows certain family members of all members of the Armed Forces to take leave for qualifying exigencies that occur during the deployment of the service member abroad. Prior to the enactment of the NDA Act, such leave was essentially limited to family members of members of the National Guard or Reserves who were called to active duty as a result of a "contingency operation."

The NDA Act also increases the number of employees who may become eligible to take leave to care for a covered service member as a result of the service member's service-related injury or illness. Prior to enactment of the NDA Act, such leave was essentially limited to care for current members of the Regular Armed Forces, the National Guard, or the Reserves who incurred a serious injury or illness while on active military duty. Such leave did not extend to care for military veterans or to cover pre-existing injuries or illnesses that were aggravated during military service. Under the NDA Act, such leave can now be taken to care for any individual who was a service member at any time during the five-year period before he or she began to receive medical care for the serious injury or illness, thus covering veterans for a period of time. The serious injury or illness must have been incurred or aggravated while on active military duty. As a result of this change, for example, family members of veterans who begin to show signs of post-traumatic stress disorder after completing their military service may qualify for this leave.

If you have any questions about the new FMLA requirements, please do not hesitate to contact one of the Chadbourne attorneys listed below. To view our prior client alert regarding the recent FMLA regulations and the military-related leave provisions, [click here](#).

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