

# AkerAlert

## Labor and Employment Law

# President Signs Expansion of the Family and Medical Leave Act

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The National Defense Authorization Act for FY 2008 (NDAA), which was signed into law by President Bush on Monday, January 28, 2008, includes a significant expansion of the Family and Medical Leave Act (FMLA) and is the first such expansion since the FMLA was enacted in 1993. The two FMLA focal points of the amendment are:

### Care for Servicemembers

The FMLA now provides leave for up to 26 workweeks for a "spouse, son, daughter, parent, or next of kin" (defined as the "nearest blood relative") to care for a "member of the Armed Forces, including a member of the National Guard or Reserves, 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." The Department of Labor (DOL) has advised that the above-referenced leave is available immediately under the law and that the DOL is "working quickly to prepare more comprehensive guidance regarding rights and responsibilities under this new legislation." In the interim, the Wage and Hour Division of the DOL has stated that it will require employers to act "in good faith" in providing leave under the new legislation.

### Qualifying Exigency

Subject to the DOL defining "qualifying exigency", the FMLA will also provide leave for up to 12 workweeks "[b]ecause of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation." Although the DOL has not yet defined "qualifying exigency", the term appears at this point to be unrelated to any medical condition. The DOL has advised that "[b]y its express terms," this type of leave "is not effective until the Secretary of Labor issues final regulations defining 'any qualifying

exigency.'" The DOL has further advised that it is "expeditiously preparing such regulations." In the interim, the Department "encourages" employers to provide this type of leave to qualifying employees.

It is recommended that employers begin notifying their employees about the new leave options promptly. FMLA-type procedures should be used as may be appropriate (for example, procedures regarding substitution of paid leave and notice). Employers should also amend their FMLA policies to provide employees with additional notice of these new leave entitlements.

*For questions or additional information, please contact any of the attorneys in Akerman's Labor and Employment Group.*

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