

[LEGISLATIVE UPDATE](#)

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President Bush signed into law a defense authorization bill that includes provisions amending the Family and Medical Leave Act to provide (a) up to six months of leave for family members caring for military veterans injured while on active duty in the U.S. Armed Forces and (b) 12 weeks of leave to family members of armed services personnel called up to active duty under certain circumstances. The bill was signed on Jan 28, 2008 and takes effect immediately and had wide bipartisan support.

The new legislation modifies in several significant ways the federal Family and Medical Leave Act of 1993 ("FMLA"), which provides qualifying employees up to 12 weeks of unpaid leave per year to care for their own or a family member's serious medical condition.

For example, the legislation more than doubles the available time off from work to care for injured servicemembers, from 12 to 26 weeks in a single twelve-month period. It also makes eligible for leave a new category of employees who have immediate family members called to active duty, apparently without regard to any medical issues. It covers leaves to care for 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 members medically unfit to perform the duties of their office, grade, rank, or rating. It applies broadly to servicemembers who are undergoing medical treatment, recuperation, or therapy, are in outpatient status, or otherwise are on the temporary disability retired list, for a serious injury or illness. For this type of leave, the legislation expands the definition of covered employee to include the "next of kin," or nearest blood relative, of a covered servicemember.

The final legislation also contains a provision providing up to 12 weeks of leave because of any "qualifying exigency" arising out of the fact that a covered employee's spouse, child or parent is on or has been called to active duty in the Armed Forces. Contingent upon the Department of Labor's definition of a "qualifying exigency," this provision provides 12 weeks of leave to the immediate family of servicemembers called to active duty and complements state family military leave laws that provide for shorter duration of leave or only cover spouses of servicemembers. An employer may require that a request for such leave be supported by certification showing that the servicemember has been called to active duty. Seven states (California, Illinois, Indiana, Maine, Minnesota, Nebraska and New York) have passed state family leave laws which are somewhat different than the new federal law.

Because new legislation amends the 1993 statute, other FMLA requirements, such as the requirement that returning employees be restored to the same position as when their leave commenced and the requirement to continue group health plan coverage during the leave, apply to newly granted types of leave. Employers should amend their FMLA policies to provide employees with notice of these new leave entitlements.

Jackson Lewis has published a sample Servicemember Family and Medical Leave policy which is available for downloading at the following address:

www.jacksonlewis.com/legalupdates/pdf/SampleServicememberFMLAPolicyAddendum.pdf.