

The Family and Medical Leave Act and National Defense Authorization Act for FY 2010 Amendments

(February 2010)

On October 28, 2009, the President signed into law the National Defense Authorization Act for Fiscal Year 2010 (2010 NDAA), **Public Law 111-84**. Section 565 of the 2010 NDAA amends the Family and Medical Leave Act (FMLA). These amendments expand the military family leave provisions added to the FMLA in 2008, which provide qualifying exigency and military caregiver leave for employees with family members who are covered military members.

The 2010 NDAA amendments to the FMLA provide that an eligible employee may take FMLA leave for any **qualifying exigency** arising out of the fact that the employee's spouse, son, daughter, or parent is on (or has been notified of an impending call to) "covered active duty" in the Armed Forces. "Covered active duty" for members of a **regular** component of the Armed Forces means duty during deployment of the member with the Armed Forces to a foreign country. "Covered active duty" for members of the **reserve** components of the Armed Forces (members of the U.S. National Guard and Reserves) means duty during deployment of the member with the Armed Forces to a foreign country under a call or order to active duty in a contingency operation as defined in section 101(a)(13)(B) of title 10, United States Code. (Prior to the 2010 NDAA amendments, qualifying exigency leave did not apply to employees with family members serving in a regular component of the Armed Forces and there was no requirement that members of the National Guard and Reserves be deployed with the Armed Forces to a foreign country.)

The 2010 NDAA also expands the **military caregiver leave** provisions of the FMLA. Military caregiver leave entitles an eligible employee who is the spouse, son, daughter, parent, or next of kin of a "covered servicemember" to take up to 26 workweeks of FMLA leave in a single 12-month period to care for a "covered servicemember" with a "serious injury or illness". Under the 2010 NDAA amendments, the definition of "covered servicemember" is expanded to include a **veteran** "who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness" if the veteran was a member of the Armed Forces "at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." (Prior to the 2010 NDAA amendments, military caregiver leave was limited to care for current members of the Armed Forces, including regular components and National Guard and Reserves.)

In addition, the 2010 NDAA amends the FMLA's definition of a "serious injury or illness". For a current member of the Armed Forces the definition is amended to include not only a serious injury or illness that was incurred by the member in line of duty on active duty but also a serious injury or illness that "existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces" that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. For a veteran, a serious injury or illness is defined as "a qualifying injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran." The 2010 NDAA directs the Secretary of Labor to define "qualifying injury or illness" of a veteran.

Read more about the FMLA at www.dol.gov/whd/fmla