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**EFFECTIVE IMMEDIATELY!**

**New Family and Medical Leave Requirements  
for Military Families**

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On January 28, 2008, President Bush signed *The National Defense Authorization Act* (NDAA) into law. Section 585 (*Family Leave in Connection with Injured Members of the Armed Forces*) provides the first expansion to the Family Medical Leave Act (FMLA) since enacted in 1993. This expansion includes new leave requirements for: (1) employees with a spouse, child or parent on (or being called to) active duty and, (2) employees caring for a "covered servicemember" with a serious illness or injury incurred in the line of duty.

**Leave for Active Duty.** The NDAA provides for 12 weeks of FMLA leave to any eligible employee during any 12 month period for a "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter or parent is on (or being called to) active duty in the Armed Forces in support of a "contingency operation." A "contingency operation" is defined as a military operation as designated by the Secretary of Defense involving hostilities against an enemy of the United States or other calls to duty during times of war or national emergency; however, it is unclear what constitutes a "qualifying exigency" and whether or not it is related to a health condition. The Department of Labor (DOL) will define "qualifying exigency" through its rulemaking process. The DOL has not indicated when this definition will become available; however, on its website, states that it is "working quickly to prepare more comprehensive guidance regarding rights and responsibilities under the new legislation."

Neither the FMLA nor the NDAA pre-empt state law. Minnesota is one of only seven states with a law allowing a leave of absence (ten working days) for an employee whose immediate family member has been injured or killed while engaged in active service.



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For Minnesota employers, the new "active duty leave" in conjunction with the current state law will make leave coordination more complicated.

**Caregiver Leave.** The NDAA also allows for 26 weeks of FMLA leave in one 12 month period for any eligible employee to care for a "covered servicemember" with a serious illness or injury incurred in the line of duty. This servicemember must be the spouse, son, daughter, parent or next of kin of the employee. Permitting leave for the next of kin ("the nearest blood relative") is the first time the FMLA has authorized leave for a family member other than a spouse, parent, son or daughter.

If a husband and wife work for the same employer, the 26 weeks is only allowed as an aggregate total for both. Furthermore, during the single 12 month period, an eligible employee is only entitled to a combined total of 26 weeks of leave for: birth/adoption; serious health condition of the employee, employee's spouse, parent, son or daughter; "active duty leave" for a "qualifying exigency" (see above), and; to care for a covered servicemember with a serious injury or illness.

**Intermittent Leave.** Both types of leave described above provide for intermittent leave and reduced leave schedules. The employee, however, must meet the initial FMLA requirements (employed for at least 12 months, worked at least 1,250 hours during the 12 month period at a work-site with at least 50 employees within a 75 mile radius) to be entitled to the leave.

**Certification.** An employer may require that a request for "caregiver leave" be supported by certification issued by a healthcare provider. (This is the same certification required when an employee takes leave to care for the serious health condition of a spouse, parent, son or daughter.) An employer may also require that a request related to "active duty leave" be supported by certification. The timing and manner of the "active duty" certification, however, has not been defined by the DOL.

**Effective Dates.** The "caregiver leave" requirements went into effect immediately while the "active duty leave" will become effective once the DOL defines "qualifying exigency." The DOL advises that employers are encouraged to "act in good faith in providing leave under the legislation" while we wait for further guidance on "active duty leave" to be issued.

Employers should consider updating their FMLA policies to ensure compliance with amended law. For more information, contact Thomas Revnew at 952.921.4622.

**REMINDER: Posting Deadline for OSHA 300-A Log is February 1**

OSHA 300-A logs must be posted by February 1 and remain posted through April 30, 2008. Covered employers with more than 10 employees are required to post this log regardless of whether any reportable injuries/illnesses occurred during the prior year. For more information, contact Thomas Revnew at 952.921.4622.

**SAVE THE DATE**

**The Third Annual Upper Midwest Labor Law Forum for HR and Labor Relations Professionals**

Thursday, April 10, 2008  
8:30 a.m. — 4:00 p.m.

The program will feature leading experts from business, government and academia.

Highlights of the program include:

- ♦A Strategic Review of Recent Labor Developments
- ♦Topical Trends at the Bargaining Table
- ♦Trends and Tactics in Arbitrating Labor Disputes
- ♦Managing Labor Relations and Past Practices

*For more information and online registration, go to [www.seatonlaw.com](http://www.seatonlaw.com) or call us at 952-896-1700*