

Monday, March 17, 2008

The Family and Medical Leave Act and National Defense Authorization Act Of 2008

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA), Pub. L. 110-181. Among other things, section 585 of the NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to permit a spouse, son, daughter, parent, or next of kin to take ***up to 26 workweeks*** of leave 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.

Please note that the provisions in the NDAA providing this leave are effective as of the date of the President's signing, but the Department of Labor (DOL) has yet to issue regulations governing this leave. In the interim, Wage & Hour Division will require employers to act in good faith in providing leave under the new legislation. Because the NDAA amends the FMLA, FMLA-type procedures should be used as may be appropriate (for example, procedures regarding substitution of paid leave and notice).

In addition, the NDAA also permits an employee to take *up to 12 workweeks* of FMLA leave for any qualifying exigency (as the Secretary [of Labor] 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. By its express terms, this provision of the NDAA is not effective until the Secretary of Labor issues final regulations defining any qualifying exigency. Again, the DOL is in the process of preparing such regulations. In the interim, DOL encourages employers to provide this type of leave to qualifying employees.

Although, as stated above, the DOL is in the process of creating the regulations that will govern this leave, employers with FMLA obligations should revise their personnel policies immediately to comply with H.R. 4986.

For more information regarding the above, please contact Heather Candy at hcandy@pkwhlaw.com or (916) 442-3552.