

LABOR & EMPLOYMENT BULLETIN

February 2008

FAMILY and MEDICAL LEAVE ACT EXPANDED

In the National Defense Authorization Act for the Fiscal Year 2008, Congress expanded the Family and Medical Leave Act by granting employees who need to take time off to care for a service member (Armed Forces including National Guard or Reserves), 26 work-weeks of leave.

Under normal circumstances, employers are only required to provide 12 weeks of FMLA leave in a 12-month period. This new provision requires 26 weeks of FMLA leave when an employee is caring for a service member who has a serious injury or illness (medically unfit to perform his assigned military duties). The serious injury or illness must have occurred while the service member was on active duty. The care provider must be a spouse, son, daughter, parent or next of kin.

The new provision does not require paid leave and the employer maintains the option of requiring the employee to use paid time off (i.e. vacation, sick time) as part of the 26 weeks. While 30 days notice for leave is generally required for FMLA leave, in the case of care for a service member, the employee need only provide notice that is “reasonable and practicable.”

Congress has given the Secretary of Labor the option of creating a certification requirement so that employers can verify that employees are actually caring for a service member who is seriously ill or injured. Presumably, the Secretary of Labor will issue regulations addressing leave to care for a service member.

Employers are required to maintain coverage under the group healthcare policies normally provided to the employee for the duration of the 26 week period. The employee remains responsible for his share of the premium.

We recommend that employers revise their FMLA policies to include leave to care for a service member. If you have questions concerning this new law, please contact William Smith at (205) 868-6044 or wsmith@starneslaw.com.

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