

## FMLA Qualifying Exigency Leave and Military Caregiver Leave Expanded By New Law

**For more information regarding this or any other employment-related issue, please contact your Vorys attorney or a member of the Vorys Labor and Employment Group by calling 614.464.6400.**

On October 28, 2009, President Obama signed into law the National Defense Authorization Act of 2010. The Act amends the FMLA by expanding on provisions added to that law in 2008 dealing with qualifying exigency leave and military caregiver leave.

In 2008, the FMLA was amended to allow eligible employees to take up to 12 weeks of job-protected leave in a 12-month period for any “qualifying exigency” arising out of the active duty or call to active duty status of a spouse, son, daughter or parent. Under the 2008 amendment, qualifying exigency leave was limited to family members of Reserve and National Guard members. The National Defense Authorization Act of 2010 expands qualifying exigency leave to the spouse, son, daughter, or parent of active duty members in the regular Armed Forces who are deployed to a foreign country.

The 2008 amendment to the FMLA also provided eligible employees who are family members of current service members up to 26 weeks of military caregiver leave in a single 12-month period to care for a current service member in the regular Armed Forces, National Guard, or Reserves with a serious illness

or injury incurred in the line of duty while on active duty. The 2010 National Defense Authorization Act allows eligible employees to take leave to care for a veteran who was a member of the regular Armed Forces, National Guard, or Reserve at any time during the five years preceding the date on which the veteran undergoes medical treatment, recuperation, or therapy for a serious illness or injury.

The 2010 Act also expands military caregiver leave to cover the aggravation of existing or pre-existing injuries incurred in the line of duty while on active duty. Current FMLA regulations exclude the aggravation of existing injuries incurred in the line of duty while on active duty as a basis for taking military caregiver leave.

The 2010 Act directs the U.S. Department of Labor to formulate regulations to carry out the amendments. It is not yet clear whether these amendments are effective immediately or whether they will take effect only after the implementing regulations are issued. Accordingly, employers would be well advised to revise their FMLA leave policies to reflect these revisions to the FMLA's military leave provisions.

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This client alert is for general information purposes and should not be regarded as legal advice.