

FMLA Family Military Leave Benefits Expanded to Cover Armed Services Members and Veterans

By [Karen S. Aframe](#) | November 09, 2009

As you know from our prior alerts, Congress amended the Family and Medical Leave Act (FMLA) in 2008 to offer FMLA coverage to eligible employees for qualifying reasons related to the military service of an employee's family member. Under the 2008 revisions to FMLA, an employee with a family member serving in the Reserves or National Guard who is called to active duty is entitled to FMLA leave for qualifying exigencies. This benefit did not extend employees with family members on active duty in a regular component of the U.S. Armed Services. On October 28, 2009, President Obama signed the 2010 National Defense Authorization Act (NDAA) that includes provisions expanding FMLA military family leave benefits to include exigency leave coverage to family members of active duty members of the regular Armed Services. These expanded FMLA rights are effective immediately.

Accordingly, family members of persons serving on active duty in a regular component of the Armed Services are now entitled to FMLA exigency leave under the same circumstances as family members of persons serving in the Reserves or National Guard.

In addition, the NDAA amended military caregiver FMLA leave. The 2008 amendments to the FMLA created military caregiver leave, which provides an eligible employee with up to 26 weeks of unpaid leave to care for a family member (spouse, son, daughter, parent, or next of kin) who is injured while serving on active military duty. Since the passage of the NDAA, effective immediately, eligible employees may take FMLA caregiver leave for up to five years after their veteran family member or next of kin ends active duty. As such, covered family members are now eligible for 26 weeks of leave to care for veterans who are undergoing medical treatment, recuperation or therapy for a serious injury or illness and who were members of the Armed Services, the Reserves or the National Guard at any time during the five years preceding the date of treatment, recuperation or therapy.

Employers should review their FMLA policies, and amend them as necessary in order to comply with these expanded FMLA military family leave rights. If you need any assistance in doing so, please contact Matthew Tarasevich (mtarasevich@bernsteinshur.com) or Lori Londis Dwyer (ldwyer@bernsteinshur.com) in Portland (207 774-1200), or Karen Aframe (kaframe@bernsteinshur.com) in Manchester (603 623-8700).