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# New Law Grants FMLA Leave To Families Of Servicemembers

On January 28, 2008, President Bush signed a bill providing for job-protected, unpaid leave under the Family and Medical Leave Act ("FMLA") for families of servicemembers in certain circumstances. The Support for Injured Servicemembers Act allows employees who otherwise qualify for FMLA leave to take leave in two new situations:

1. An employee may take up to 12 weeks of leave in any 12 month period because of any "qualifying exigency" relating to the fact that the employee's child, spouse, or parent has been called to active duty in support of a "contingency operation" (for example, the war in Iraq). The Act does not define "qualifying exigency" but instead leaves to the Department of Labor the responsibility of issuing regulations defining this term. The regulations are expected to be issued in a few weeks. Presumably, the term "qualifying exigency" will be a catch-all covering a variety of pressing needs that could arise with a servicemember's departure, such as child care.
2. An employee may take up to 26 weeks of leave in a single 12 month period to care for a spouse, child, parent, or next of kin who is a "covered servicemember" (defined as a member of the Armed Forces who is undergoing medical treatment or recovering from a serious injury or illness incurred while on active duty). The 26 weeks of leave to care for an injured servicemember may only be used once by an employee, but it may be taken intermittently throughout the 12 month period. An employee is only entitled to receive a maximum of 26 weeks of leave

during the 12 month period (i.e., the employee will not be eligible for additional leave for other FMLA-qualifying reasons in that period once he or she meets the 26 week threshold).

The new law takes effect immediately, despite the fact that the regulations defining "qualifying exigency" will not be available for at least a few weeks. Employers who are subject to the FMLA will need to update their FMLA policies and procedures promptly to account for these new forms of leave.

#### ABOUT THE AUTHOR

Kevin D. Kelly is a partner in Locke Lord Bissell & Liddell LLP's Labor & Employment group. He litigates labor and employment cases and counsels clients on labor and employment law compliance issues.

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