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President Signs Law Amending the Family and Medical Leave Act (2008)

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THE UNIVERSITY of TENNESSEE
MUNICIPAL TECHNICAL ADVISORY SERVICE

...in cooperation with the Tennessee Municipal League

#158
HOT topic

February 13, 2008

PRESIDENT SIGNS LAW AMENDING THE FAMILY AND MEDICAL LEAVE ACT

Bonnie Curran, Human Resources Consultant

For the first time since its adoption in 1993, the Family and Medical Leave Act (FMLA) has been amended. The revision provides new benefits for military personnel and their families, and comes as a result of the National Defense Authorization Act (NDAA) for Fiscal Year 2008 (Public Law 110-181).

The expansion of FMLA as provided by the NDAA more than doubles the amount of protected leave some veteran families are entitled to under the act. Under the new regulations, eligible employees may be entitled to take up to 26 weeks of unpaid leave to care for an injured service member and up to 12 weeks of unpaid leave for "any qualified exigency" if a spouse, son, daughter, or parent service member is called up for active duty or is on active duty. While the term "qualifying exigency" is not defined in the amendment, the intent of Congress was to provide military families time to put their affairs in order prior to and subsequent to active military duty. This could include such issues as child care, care for a parent, finances, living arrangements and other personal matters.

Since its inception, FMLA regulations have required employers to offer eligible employees up to 12 weeks of unpaid, job-protected leave due to the birth or adoption of a child; to care for a child, parent, or spouse who has a serious health condition; or when an employee has a serious illness. The expansion to the law allows eligible military family members to now take family and medical leave to deal with any qualifying event or "exigency" as defined in the new regulations. NDAA amends the FMLA by adding two new reasons an employee may request job-protected leave from his or her employer.

Under the revised law, military caregivers may be permitted to take up to a combined total of 26 weeks of unpaid leave during a single 12-month period to take care of a child, parent, spouse, or next of kin who sustains an injury during active military service when that injury results in the service member being unable to perform the duties of the member's office, grade, rank or rating. FMLA defines a covered service member as 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 illness or injury.

The amendment to the FMLA also includes a provision that allows eligible family members to take up to 12 weeks of unpaid leave when a spouse, son, daughter, or parent is called to active duty or for "any qualifying exigency" occurring when a family member is in active duty. This includes notification of an immediate family member's impending call or order to active duty in the armed forces.

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The new law is effective January 28, 2008, and requires the Department of Labor (DOL) to review the National Defense Authorization Act for FY 2008 (Section 585) and to issue final regulations on the changes to the FMLA. Specifically, the DOL will attempt to better define the designation of "any qualifying exigency" and provide guidance regarding rights and responsibilities under the revised act. In the interim, the Department of Labor encourages employers to act in good faith and amend their leave policies to accommodate families of the armed forces.

It is important to note that the revisions to FMLA do not change the eligibility requirements or general provisions for employers and employees covered by the FMLA of 1993. Employees are still required to work at least 1,250 hours and 12 months before becoming eligible for family and medical leave. In general, employers with fewer than 50 employees are not subject to the FMLA requirements.

An eligible employee may be required to use accrued vacation leave, sick leave, personal leave, or other types of leave as defined by the employer for any part of the 26-week period. The regulations do not require the employer to offer paid medical leave in any situation in which the employer would not normally provide paid leave. Requests for leave must be supported by a certificate issued by the healthcare provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, or the next of kin of an individual in the case of leave taken. An employer may require that an employee's request for leave related to active duty be supported by a certification. The Department of Labor is expected to address this issue when it clarifies the regulations.

For more information on changes to FMLA visit www.dol.gov/esa/whd/fmla/NDAA_fmla.htm, or contact Bonnie Curran or Richard Stokes, MTAS human resources consultants, at (615) 532-6827.

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