

The National Defense Authorization Act for Fiscal Year 2008 Amends the Family Medical Leave Act of 1993.

On January 28, 2008, President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008 (NDAA). Section 585 of the NDAA amends the Family Medical leave Act of 1993 (FMLA) to permit a “spouse, son, daughter, parent, or next of kin” to take up to 26 workweeks of leave to care for 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 injury or illness.”

The provisions in the NDAA providing this leave are effective as of the date of the President’s signing. (January 28, 2008)

The U.S. Department of Labor (DOL) is preparing guidelines regarding the applicable rights and responsibilities under the new legislation. In the interim, according to the DOL, employers are expected to act “in good faith” in providing leave under the new legislation. Also, according to the DOL, because the new law directly amends the FMLA, an employer's current FMLA practices and procedures should be maintained and simply applied to the amended circumstances where applicable.

The NDAA also amends the FMLA to permit an employee to take FMLA leave for “any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the Armed Forces in support of a contingency operation.” By its express terms, this provision of the NDAA would not be effective until the Secretary of Labor issues final regulations defining “any qualifying exigency.” The DOL is apparently preparing such regulations at present. In the interim, however, the DOL is encouraging employers to provide this type of leave to qualifying employees.

Clients who have questions regarding issues discussed in this article, or any education law matter, should feel free to call us at 215-345-9111.