

FMLA EXPANDED TO COVER MILITARY FAMILIES

Recently, Congress passed a Bill to provide additional reasons why qualified employees of military families can take up to twelve weeks of unpaid leave under the Family and Medical Leave Act. Once President Bush signs the Bill (which he is expected to do) covered employers will be required to provide leave to qualified employees for two new reasons:

- (1) To manage qualifying exigencies relating to the family member's call to duty; and
- (2) To care for an injured service member's serious injury or illness.

Eligible employees will be entitled to take FMLA leave for any "qualifying exigency" arising out of the fact that the employee's spouse, son, daughter or parent is on active duty or has been notified of an impending call or order to active duty. The proposed amendment does not change the amount of time off eligible employees may receive – it only changes the reasons they can take the leave. The United States Department of Labor is required to define the "qualifying exigency" and until DOL issues its regulations, employers should be very careful in denying an employee of a military family leave to care for a family member's call to duty or serious injury or illness.

With respect to qualified employees who need leave to care for serious injury or illness of a service member, the amendment does expand the amount time these employees can take unpaid leave. Under the proposed Bill, such employees can take up to 26 weeks of unpaid leave during a single 12 month period to care for a service member. Employees eligible for this expanded amount of time off include employees who are the son, spouse, daughter, parent or a "next of kin" of a service member who has a serious injury or illness. The term "next of kin" means the service members' nearest blood relative.

No changes have been made to the Acts coverage so covered employers continue to be those with at least 50 or more employees in each working day in 20 or more calendar weeks working within 75 miles of each other. Eligible employees will continue to be those who have been employed for at least 12 months and have worked at least 1250 hours in the preceding 12 months prior to the requested time off.