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Congress Expands the Scope of the "Qualifying Exigency" and "Military Caregiver" Leave Provisions Under the FMLA

On October 28, 2009 President Obama signed into law the National Defense Authorization Act (NDAA) for Fiscal Year 2010. Among other things, the 2010 NDAA amends the Family and Medical Leave Act of 1993 (FMLA) to expand the military family leave entitlements first made available to eligible employees as part of the 2008 NDAA.

Qualifying Exigency Leave

In the 2008 NDAA Congress amended the FMLA to allow eligible employees to take up to 12 work weeks of job-protected leave in a given 12-month period to address "qualifying exigencies" that may arise when the employee's spouse, son, daughter or parent is on active duty or is on call to active duty status in the **National Guard or Reserves in support of a contingency operation**. Qualifying exigencies may include: short-notice deployment, rest and recuperation, certain pre-deployment military events and support programs, childcare and school activities, financial and legal obligations, counseling, certain post-deployment activities and any other additional military-related activities agreed to by the employer and the employee in advance.

The 2010 NDAA now expands the "qualifying exigency" leave provisions to eligible employees who have a spouse, son, daughter or parent on active duty status in the **Regular Armed Forces**. No longer is this provision limited to the family of servicemembers in the National Guard and Reserves. The 2010 NDAA also eliminates the

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requirement that the servicemember's active duty status be in "support of a contingency operation." Instead, the servicemember must simply be deployed with the Armed Forces outside the United States in order for an eligible family member to take advantage of qualifying exigency leave under the FMLA.

Military Caregiver Leave

The 2008 NDAA also amended the FMLA to allow an eligible employee who is the spouse, son, daughter, parent or next of kin of a "covered servicemember" to take up to 26 work weeks of job-protected leave during "a single 12-month period" to provide care for the covered servicemember. The regulations define a covered servicemember as "a current 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 incurred in the line of duty on active duty."

The 2010 NDAA now expands the definition of a covered servicemember to also include "**veteran[s]** who [are] undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who [were] member[s] of the Armed Forces (including . . . the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy." In other words, an eligible family member can take up to 26 workweeks of FMLA leave to provide care for a veteran for up to five years after he or she leaves active military service.

For further information regarding the changes to these provisions, please contact your principal Squire Sanders lawyer or one of the individuals listed in this Alert.

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