

President Signs Amendment to Family and Medical Leave Act

January 30, 2008

On Jan. 29, President Bush signed into law House Bill (HB) 4986 which, among other things, amends the Family and Medical Leave Act (FMLA) to provide leaves of absences for families of military men and women. Employers subject to the FMLA need to promptly advise their employees of this new right and amend their FMLA policies as soon as possible.

Specifically, HB 4986 permits an employee to take up to 12 workweeks of leave because of a “qualifying exigency,” which arises “out of the fact that a spouse, a son, a 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.”

Significantly, HB 4986 does not define a “qualifying exigency” but leaves this task to the Secretary of Labor to determine by regulation. However, the common meaning of exigency includes pressing needs or a situation that requires swift attention or is urgent. Until this term is defined, employers are advised to be flexible and to keep in mind the purpose of HB 4986 when granting or denying leave requests. Therefore, employers may wish to broadly define the term to contemplate leaves for such things as the employee’s need for time off because he or she is now solely responsible for child care until other arrangements can be made.

In addition, HB 4986 provides “servicemember family leave” for “eligible employees” for a total of 26 workweeks to care for a servicemember with a serious injury or illness incurred in the line of duty. An eligible employee for this leave includes “the spouse, son, daughter, parent *or next of kin* (nearest blood relative) of a covered servicemember.” The 26 workweeks permitted for servicemember family leave includes the 12 weeks of FMLA leave already provided to employees, and it is only available during a single 12-month period. Therefore, an individual who takes 26 weeks of Servicemember Family Leave is not eligible for any additional time off for other FMLA leave.

Time off for traditional FMLA leave is not extended by HB 4986 and remains at 12 weeks. As with all FMLA leaves of absence, the leaves described above are unpaid, unless the employer requires or the employee elects to use available unused paid time off.

To read Section 585 of House Bill 4986, which relates to Family Leave, click the PDF link below.