

# THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP  
ATTORNEYS AT LAW

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## The FMilitaryLA: An Expansion of Workers' Leave Rights

Families of active duty soldiers in the U.S. military have new rights to unpaid leave thanks to Congressional action signed into law by President Bush in late January. Employers will be required to provide family leave in two situations:

- If the employee is the “next of kin” and needs leave to care for an injured service member (including one with a medical condition resulting from active duty) or if the employee is the injured service member, then the employee is entitled to take up to twenty-six weeks of leave in a single twelve-month period; and
- If an employee can point to a “qualifying exigency” that results from a service member being called up for active duty, and the employee is in the service member’s immediate family, then the employee is entitled to twelve weeks of leave in a twelve-month period.

The amendments providing these expanded rights come along at a busy time for the Department of Labor. The DOL has recently proposed new regulations on intermittent leave, medical notification and reinstatement obligations, all aimed at clarifying employers’ FMLA duties. Now, the DOL must develop regulations to clarify several open questions. What is a “qualifying exigency”? How does “next of kin” differ from “immediate family member,” the term that has always determined who may take family leave? Is a “single twelve-month period” different than a rolling twelve-month period, another familiar FMLA concept? How does an employee certify the existence of a qualifying exigency? Many more questions await answers.

The DOL has promised to put new regulations into place quickly, and the duty to provide leave for “qualifying exigencies” will not go into effect until the DOL issues new rules. In the meantime, covered employers have a long list of things to do: revising policies, modifying notification forms, and providing new training for payroll and HR staff are a good start.

# TIP

The FMLA has new provisions for leaves associated with military injuries or and exigencies caused by a family member being called into active duty. Check our blog at <http://hrbriefcase.blogspot.com> to find out when and where you can receive training by Smith Moore on the new law.



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