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A legal update from Dechert's Labor and Employment Group

New Law Expands FMLA Rights

President Obama signed into law on October 28, 2009 the National Defense Authorization Act for Fiscal Year 2010 (P.L. No. 111-84). The Act amends the federal Family and Medical Leave of 1993 ("FMLA") and expands eligibility for two relatively new categories of military-related family leave—qualifying exigency leave and military caregiver leave. The amendments were effective upon enactment.

Congress amended the FMLA in 2008 to provide exigency leave for family members (spouse, parent, son, or daughter) of National Guard members and Reservists called to active duty. The leave was available to take care of issues related to their call-up, such as child care and school activities, military events and related activities, financial and legal arrangements, etc. The new law expands the availability of exigency leave to employees with family members who are members of regular components of the U.S. military who are called to active duty.

Military caregiver leave was also added last year to the available types of FMLA leave. Up to 26 weeks in a 12-month period of this unpaid leave is available to qualifying employees with a family member who is a *current* service member. Military caregiver leave was designed to allow the employee to care for a service member with a serious illness or injury incurred in the line of duty while on active duty. Congress has now expanded this leave to enable family members to care for *veterans* undergoing medical treatment, recuperation, or therapy for a serious illness or injury sustained within five years preceding the date of treatment, therapy, or recuperation.

We anticipate that the U.S. Department of Labor soon will be issuing revised FMLA regulations to reflect the new changes. However, employers can act now to reduce their risk. Employers are advised to immediately update their FMLA policies in accordance with the new law and to alert managers to these changes to avoid possible problems.

Practice group contacts

If you have questions regarding the information in this update, please contact the Dechert attorney with whom you regularly work, or any of the attorneys listed. Visit us at www.dechert.com/employment.

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