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FMLA AMENDED BY THE NATIONAL DEFENSE AUTHORIZATION ACT

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA). Section 585 of the NDAA, in relevant part, amends the Family and Medical Leave Act of 1993 (FMLA) to permit a "spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave to care for a "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." This provision is effective as of the date of the President's signing.

The NDAA also permits an employee to take FMLA leave for "any qualifying exigency (as the Secretary [of Labor] shall, by regulation, determine) arising out of the fact that the spouse, or a son, 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." By its express terms, this provision of the NDAA is not effective until the Secretary of Labor issues final regulations defining "any qualifying exigency;" however, in the interim, the Department of Labor encourages employers to provide this leave to qualifying employees.

The Department of Labor is working quickly to prepare the necessary regulations and formulate guidelines regarding rights and responsibilities under the new legislation. In the meantime, the Department of Labor requires employers to act in good faith in providing leave under the new legislation, and instructs employers to follow FMLA-type procedures when providing this leave.

This Alert was prepared by Christopher L. Brigham and Angel Peterson, a third year law student at Quinnipiac University School of Law, who will be joining Updike, Kelly & Spellacy, P.C. as an associate in September, 2008. For further information regarding this FMLA amendment or any other employment related question, please contact Christopher L. Brigham of the Employment Law Practice Group at Updike, Kelly & Spellacy, P.C. at (203) 786-8310 or cbrigham@uks.com.

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