

## CLIENT ALERT

RE: Amendment to Family and Medical Leave Act (FMLA)

The FMLA, as originally passed 15 years ago, requires employers with 50 or more employees to offer certain employees up to 12 weeks of annual unpaid leave after the birth or adoption of a child, to care for a child or parent or spouse with a serious health condition, or if the employee has a serious health condition. On January 28, 2008, however, President Bush signed into law the National Defense Authorization Act for Fiscal Year 2008 which includes two provisions expanding the benefits of the FMLA to assist service members and their families. These new provisions were effective upon the President's signature.

This expansion requires businesses to offer up to 26 weeks of unpaid leave during a single 12 month period to employees (spouse, son, daughter, parent, nearest blood relative) who provide care to members of the Armed Forces, including the National Guard and Reservists, who are undergoing medical treatment, recuperation, therapy, or are otherwise in outpatient status, or who are otherwise on the temporary disability retired list, for a serious injury or illness incurred in the line of duty. It also requires employers to provide 12 weeks of unpaid FMLA leave to immediate family members (spouse, son, daughter, and parent) of soldiers, reservists, and members of the National Guard who have a "qualifying exigency." Although the new provisions do not define "qualifying exigency," it may include overseas assignments, recalls to active duty, troop mobilizations, or other pressing needs requiring swift attention. The Department of Labor will soon be drafting regulations which hopefully will define "qualifying exigency" and provide employers with guidelines to comply with the amendments.

It would be prudent for employers to amend their FMLA policy and other FMLA forms to comply with these new provisions. We are attaching a memo that can be used to supplement your existing policy. You may visit the "Resources and Forms" section of our website ([www.miemploymentlaw.com](http://www.miemploymentlaw.com)) to retrieve this memo at any time. As always, if you have any questions, please do not hesitate to give us a call.

PILCHAK COHEN & TICE, P.C.

## **MEMORANDUM**

To: Employees

From: Human Resources

### **AMENDMENT TO FAMILY AND MEDICAL LEAVE ACT OF 1993**

The Family and Medical Leave Act of 1993 was recently amended to assist military service members and their families. A summary notifying you of these changes is described below.

#### **Active Duty Leave**

This new provision provides 12 weeks of leave per 12-month period for a “qualifying exigency” arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty). The term “active duty” means duty under a call or order to active duty under a provision of law referred to in section 101 (a)(13)(B) of title 10, United States Code. Although the term “qualifying exigency” was not defined in the new amendments to the FMLA, we will do our best to comply with the spirit of the law until the term is clarified by the Secretary of Labor.

#### **Caregiver Leave**

This provision provides that an eligible employee who is the spouse, son, daughter, parent, or next of kin (closest blood relative) of a covered service member is entitled to 26 workweeks of leave during a single 12-month period to care for the service member. The term “covered service member” means 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 incurred in the line of active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating.

As set forth in our FMLA policy, the leaves described above are unpaid, unless we require or the employee elects to use available unused paid time off. Other existing FMLA requirements set forth in our FMLA policy continue to apply to the above leaves as well. Both new types of leave also may be taken intermittently or on a reduced schedule basis. Please direct any questions you may have regarding these leaves to the Human Resources Department.

PILCHAK COHEN & TICE, P.C.