

The following Labor & Employment news may be of interest to you in your business and is provided as a bulletin for our clients and friends from the attorneys in the Hall Estill Labor & Employment practice group. Should you have any concerns, questions, or assistance relating to the topics in this update or any other matter, please contact any one of our attorneys.

Expansion of FMLA Coverage

On January 28, 2008, President Bush signed into law a measure that expands the benefits of the Family and Medical Leave Act (“FMLA”) for service members and their families.

The new law provides an additional basis for an eligible employee¹ to take FMLA leave by requiring that employers with fifty (50) or more employees provide up to twelve (12) weeks of unpaid leave a year for a “qualifying exigency” connected to the active duty status of an employee’s spouse, son, daughter, or parent. The new law did not define the term “qualifying exigency,” but has directed the Secretary of Labor to issue regulations providing guidance.

Additionally, the new law also contains a provision providing that an eligible employee may take up to twenty-six (26) weeks of FMLA leave to care for a spouse, son, daughter, parent, or “next of kin” who was wounded while serving as a “covered servicemember.” The servicemember must have a “serious illness or injury” incurred while on active duty that may render the member unable to perform the duties of his or her office, grade, rank, or rating and for which the member is (1) undergoing medical treatment, recuperation, or therapy; (2) an outpatient; or (3) on a temporary disability retired list.

The new legislation also provides that either of these leaves may be taken on an intermittent or reduced schedule basis and that paid leave may be substituted for the new unpaid leaves. Additionally, specific to these new provisions, the new law allows an employer to request certification for servicemember family leave and requires an employee to provide “reasonable and practicable” notice of leave that is foreseeable due to the qualifying exigency related to active duty.

The Secretary of Labor has not yet promulgated any regulations providing guidance on these new provisions of the FMLA. Additionally, the new law did not provide an effective date, but it is advisable that employers begin implementing it immediately and permitting leave for servicemembers and their families under the FMLA.

¹ The United States Department of Labor (“DOL”) has provided guidance for employers to determine if servicemembers are eligible employees under the FMLA. While eligibility typically requires that the person must have been employed by the employer for at least twelve (12) months and that the person must have worked at least 1,250 hours for that employer during the twelve (12) month period preceding the start of the leave, the DOL has provided guidance for determining whether servicemembers who have performed military service qualify under this criteria. In general, a servicemember’s eligibility will depend upon whether the servicemember would have met the eligibility requirements had he or she not performed military service.

New Oklahoma Drug Testing Law

On November 1, 2007, new legislation governing employer drug and alcohol testing under the Oklahoma Standards for Workplace Drug and Alcohol Testing Act became effective. Prior to this new law, an employer who conducted drug and alcohol testing with its employees had to have a written drug and alcohol testing program that included specific items – one of which was a list of the substances which may be tested (both brand and common name, if any) and the chemical name of any drug or its metabolite to be tested. Now, under this new law, an employer’s written program need only include a statement that “the substances tested shall be for drugs and alcohol as defined in the Standards for Workplace Drug and Alcohol Testing Act, including controlled substances approved for testing by rule by the State Commissioner of Health.”

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