

FMLA Benefits for Service Members and Their Families

On January 28, 2008, President Bush signed into law H.R. 4986, the National Defense Authorization Act for FY 2008 (NDAA), Pub. L. 110-181. Among other things, section 585 of the NDAA 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."

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."

The Department of Labor's Wage and Hour Division published a [Final Rule](#) under the Family and Medical Leave Act. The revised final rule becomes effective on January 16, 2009, and updates the regulations to implement the NDAA. The Federal Register Notice and related documents are available at Wage and Hour's [FMLA Final Rule website](#).

<http://www.dol.gov/esa/whd/fmla/finalrule.htm>

The new law allows the spouses, children, parents or other next of kin who provide care for an injured service member to take as many as 26 weeks of unpaid leave in a 12-month period. Normally, eligible employers are permitted 12 weeks of unpaid leave for such family emergencies. There is also a provision in the FMLA that allows for a service member or his or her spouse to take unpaid leave for qualifying exigencies that arise when the service member is called to active duty. The provisions of H.R. 4986 providing FMLA leave to care for a covered service member became effective on January 28, 2008, when the law was enacted. The provisions of H.R. 4986 providing for FMLA leave due to a qualifying exigency arising out of a covered family member's active duty (or call to active duty) status are not effective until the Secretary of Labor issues regulations defining "qualifying exigencies."

There are final rules being developed and this takes effect 1/16/09