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### Practice Areas

Labor, Employment and  
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## Good Company

### Family and Medical Leave Now Extends to Employees with Family Members in the Service

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The recent passage of an amendment to the Family and Medical Leave Act requires employers to change their FMLA policies. An employer's FMLA policy must be in writing and included in its employee handbook. The amendment grants leave to employees who have a service member in their family in two situations. Understanding the amendment relies on understanding numerous new definitions. Unfortunately, Congress left the definition of one type of leave to the USDOL and we are still waiting for the regulations to let us know when it applies.

The clear part of the amendment grants Caregiver Leave. This leave allows eligible employees to take 26 weeks of leave during a single 12-month period to care for a recovering service member. To be eligible, the employee must meet the normal FMLA eligibility requirements and must be the spouse, son, daughter, parent or nearest blood relative to the recovering service member. A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active-duty where that injury or illness renders the service member unable to perform the duties of the member's office, grade, rank or rating. Obviously, the employer must become familiar with the definitions of these new terms in order to apply this provision.

The part of the amendment left for the USDOL to clarify is the Family Member Leave. This grants 12 weeks of FMLA leave in connection when a *qualifying exigency* arising out of an employee's family member who is on active duty or called to duty. A family member includes a spouse, son, daughter or parent. We do not know what constitutes a qualifying exigency, so the USDOL has instructed employers to do the best they can in applying this section. One might imagine that an employee would need this leave to help a son, who is a single parent, arrange to move his children in anticipation of his deployment. At this point, an employer may best be served by using a common sense, liberal approach to what constitutes a qualifying exigency.

Until USDOL issues guidance on this amendment, employers may decide that a stand-alone policy works best. This temporary policy would refer to the employer's FMLA policy, but would not be incorporated into it until we have specific guidance from USDOL. Then, the employer can issue a new and complete FMLA policy.

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