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Employment Alert

Caretaker coverage extended under new law

Overview

Recently, President Barack Obama signed into law the National Authorization Act for Fiscal Year 2010, which extends military caregiver leave provisions to veterans. Under the new law, a worker will be able to take up to 26 weeks of leave from employment to care for a veteran for up to five years after the service member leaves the military. The leave could be taken by the caregiver if the veteran suffered a qualifying injury or illness in the line of active duty (or had an existing injury or illness aggravated in the line of active duty). The injury or illness could manifest itself before or after the service member became a veteran.

Background

Under Section 565 of the National Authorization Act, a covered service member includes a “veteran who is undergoing medical treatment, recuperation, or therapy, for *a serious injury or illness* and who was a member of the Armed Forces (including a member of the National Guard or reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.”

A serious medical injury or illness in the case of a veteran is defined as a “qualifying injury or illness ... that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.”

Comment

A qualifying injury or illness under the Military Family Leave Provision of the FMLA is one that renders the service member medically unfit to perform the duties of the member’s office, grade, rank or rating. The new law requires that the Department of Labor (“DOL”) provide a definition for a “qualified illness or injury” for veterans, since the definition used in the Military Family Leave Provision is not applicable to veterans.

Until the DOL publishes a definition of a qualifying injury or illness under the new law, whether employers may use the FMLA’s current definition of a serious medical injury or illness is uncertain. For more information, please contact Jacqueline J. Harding (Partner-Los Angeles) via e-mail at jacqueline.harding@wilsonelser.com or by phone in our Los Angeles office at 213.330.8976.

Contact us at alerts@wilsonelser.com.

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