



*State Of New Hampshire*  
**DIVISION OF PERSONNEL**  
**Department of Administrative Services**  
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**PERSONNEL MEMORANDUM 08-04**

**From:** Karen Hutchins  
Director of Personnel

**To:** Human Resource Administrators/Payroll Representatives

**Re:** FMLA Leave Expanded for Military Families

**Date:** February 5, 2008

On January 28, 2008, President Bush signed HR 4986, a defense authorization bill, which includes provisions that expand Family and Medical Leave Act (FMLA) to military family members. The measure adds two new types of leave:

- **12 week – Leave for “Qualifying Exigency”:** The law modifies the FMLA by adding a new qualifying event for the 12-weeks of unpaid FMLA leave: a “qualifying exigency” (to be determined by the Secretary of Labor) arising out of the fact that the employee's spouse, child or parent 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. When an employee requests leave for a qualifying exigency and the necessity for the leave is foreseeable, the employee must provide the employer with “reasonable and practicable” notice. Additionally, an employer may require that a request for leave for a qualifying exigency be supported by a certification that the service member is on active duty or has been called to active duty.
- **26 weeks – Leave to Care for Injured Servicemember:** The law also provides that the spouse, child, parent, or “next of kin” (defined as the “nearest blood relative”) of a “covered servicemember” is entitled to a total of 26 workweeks of unpaid leave during a 12-month period to care for the servicemember. “Covered servicemember” means a servicemember who is “undergoing medical treatment, recuperation, or therapy, is otherwise in an outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.” “Serious illness or injury,” in turn, is defined as a condition that may render the servicemember “medically unfit to perform the duties of the member's office, grade, rank, or rating.” This leave is only available during a single 12-month period, and the 26-week limit would include any leave granted pursuant to the new “qualifying exigency” provision.

***New regulations***

The Department of Labor (DOL) is required to come up with regulations defining the term "qualifying exigency" and how employers will apply the term. The DOL did submit proposed regulations on the FMLA for review. The review can last up to 90 days, after which the DOL is free to publish the proposed regulations in the *Federal Register*. Once published, interested parties will be given time to comment on the regulations. The DOL will then need to review the comments. Depending upon the comments received, the proposed regulations may be changed to reflect them before being published as final regulations.

Although this law was effective upon signature, it is not clear when the provisions amending the FMLA will be effective. It is hoped the DOL will issue regulations clarifying some of the concepts contained in this amendment. Nevertheless, employers are required to comply with the new provisions regardless of whether the DOL issues any regulations.

***Notice to Employees***

Until the new regulations are published by the DOL, and our FMLA policy documents can be amended to reflect those changes, please ensure to include a copy of this memo wherever you post your agency FMLA information and/or whenever someone requests a copy of the FMLA regulations. If you have any questions, please either call me, Mary Ann Steele or Sara Willingham at 271-3261.

End