




## Expansion of the Family and Medical Leave Act to Affect Military Families

On January 28, 2008, President George W. Bush signed into law the first significant expansion of the Family and Medical Leave Act of 1993 ("FMLA") in the roughly 15 years since it was originally adopted. The National Defense Authorization Act creates two new types of FMLA leave for family members of some deployed or injured members of the United States Armed Forces. Specifically, the FMLA has been amended in the following two ways:

1. Families of injured military personnel: Employers must offer up to 26 weeks of unpaid FMLA leave each 12 month period to employees caring for family members wounded in the course of military duty.
2. Families of reservist call-ups: Employers must grant up to 12 weeks of unpaid FMLA leave to immediate family members of reservists and members of the National Guard who are called to active duty in the United States Armed Forces. Service members need not be deployed overseas to trigger eligibility for the 12 weeks of leave.

### Effective Dates of Amendments

The full impact on employers of the FMLA expansion will not be known until the U.S. Department of Labor ("DOL") issues formal regulations. Despite the lack of clarity regarding the requirements imposed by the new legislation, the DOL has recently advised that the provision of the new law extending FMLA leave to families of injured military personnel went into effect on the day the legislation was signed by the President. The provision of the new law extending FMLA leave to employees of reservist call-ups, on the other hand, will not go into effect until further regulatory guidance is provided. The DOL insists that it is "expeditiously" drafting the relevant regulations. [back to top](#) 

### Impact of Amendments on Existing Employer Responsibilities

Importantly, the recent expansion of the FMLA in no way alters the currently existing responsibilities of an employer to a newly covered employee. For example, the Uniformed Services Employment and Reemployment Rights Act (USERRA) provides that employees who are called to or enlist for nearly all forms of military service are already entitled to up to five years of protected leave from their jobs as well as reinstatement rights. USERRA

▶ [About Butler Snow](#)

▶ [L&E Group](#)

▶ [Latest News](#)

▶ [Contact Us](#)


**Butler Snow** has been a leading presence in the legal community for more than 50 years. With more than 150 attorneys, the firm provides a broad range of services to clients on a regional and national basis from its offices in Jackson and Gulfport, Mississippi, Memphis, Tennessee and the Greater Philadelphia area.

© 2008 WORKPLACE is published by Butler, Snow, O'Mara, Stevens & Cannada, PLLC. WORKPLACE is intended for general informational purposes only and is not intended to be comprehensive with respect to the subject matter. WORKPLACE is not intended to create an attorney-client relationship with any user. WORKPLACE is not designed or intended to provide legal or other professional advice, as any such advice requires the consideration of the facts of the specific situation. The listing of attorneys or areas of practice does not indicate any certification of expertise.

If you no longer wish to receive this publication, please respond to this e-mail and type "Remove from Mailing List" in the subject line.

FREE BACKGROUND INFORMATION IS AVAILABLE UPON REQUEST.

further includes provisions describing the position to which the employee returning from leave must be reinstated, how to accommodate employees returning with battlefield injuries and other related issues. While USERRA pertains to individuals who actually engage in military service, the impact of the recent FMLA expansion will likely be primarily felt in the family members of those who choose to serve.

When viewed in combination with the obligations to returning veterans under USERRA, the recent expansion of FMLA rights to military families could cause significant problems for unprepared employers. In the current political climate, it is an unfortunate reality that many employees have immediate family members injured while serving in the military. Even more common is the employee who has an immediate family member called to active duty in the U.S. armed forces. In light of the recent FMLA amendments, employers are advised to review their FMLA policies and determine what revisions will be necessary to comply with the new requirements. [back to top](#) 

---

## Contact Us

---



• **Graham W. Askew** is an attorney in the firm's [Labor and Employment Group](#). His practice is concentrated in the areas of traditional labor law, employment litigation and business immigration. Graham can be contacted via e-mail at [graham.askew@butlersnow.com](mailto:graham.askew@butlersnow.com).