



THOMPSON HINE

October 2009

Recent Changes in Federal Law Impacting Employers

PRESIDENT OBAMA SIGNS EXPANSIONS TO FMLA MILITARY LEAVE PROVISIONS

On October 28, President Obama signed the National Defense Authorization Act for Fiscal Year 2010 (the “Act”) into law, which expands FMLA provisions regarding military leave. As a result of these changes, employers are likely to see increased eligibility for and use of FMLA military leave. The key changes to FMLA military leave requirements under the Act include:

- *Qualifying exigency leave extended to family members of those in the regular armed forces.* Previously this leave was available only to family members of service members in the National Guard or reserves. This type of leave allows family members to take time off work to handle important matters (e.g., deployment activities, arranging for childcare, drafting a will, making financial arrangements and post-deployment activities) related to the impending call to covered active duty of a child, spouse or parent.
- *Qualifying exigency leave available to family members of all those deployed to a foreign country.* The Act removes the requirement that a covered service member be serving “in support of a contingency operation” and provides that leave is available to any covered service member deployed to a foreign country.
- *Military caregiver leave extended to veterans.* Family members of veterans are now eligible to take caregiver leave to care for a veteran suffering a service-related serious illness or injury, as long as the veteran was a member of the armed forces, National Guard or reserves within five years of requiring care. This new provision is intended to allow leave to care for a family member with an injury that might not manifest right away, such as post-traumatic stress disorder. Previously, caregiver leave was available to family members of active service members.
- *Military caregiver leave expanded to cover aggravation of existing or preexisting injuries incurred in the line of duty while on active duty.* Previously, caregiver leave applied only where injuries were incurred in the line of duty and the FMLA regulations excluded the aggravation of existing injuries as a basis for taking military caregiver leave. Caregiver leave may now be taken where the serious injury or illness existed before the beginning of the service member’s active duty and was aggravated by service in line of duty on active duty.

The Act does not have an effective date, so it is unclear whether the changes are effective immediately or will take effect once regulations implementing the amendments are issued. Therefore, employers are encouraged to review and revise their FMLA leave policies to reflect the new military family leave requirements. Family members seeking to take FMLA military leave must still meet



FMLA eligibility requirements, including having worked at least 1,250 hours in the previous 12 months at a company with at least 50 employees working within 75 miles of their worksite.

NEW EEO WORKPLACE POSTER AVAILABLE

The Equal Employment Opportunity Commission has released a revised workplace anti-discrimination notice (“EEO is the Law” poster) that incorporates the requirements of the new Genetic Information Nondiscrimination Act (GINA) and the changes made by the ADA Amendments Act. The revised poster reflects the changes made to the ADA that became effective January 1, 2009, as well as GINA’s ban on employment discrimination based on an individual’s genetic information, which becomes effective November 21, 2009.

Employers subject to federal anti-discrimination laws are required to comply with posting requirements and can download the 2009 “EEO is the Law” poster at http://www.eeoc.gov/self_print_poster.pdf. Alternatively, employers can download a poster supplement at http://www.eeoc.gov/gina_supplement.pdf and post it alongside the 2002 version of the poster. Employers also can order printed copies of the new posters, which are available in English now and will be available in Spanish, Chinese and Arabic before GINA becomes effective on November 21, from the U.S. Equal Employment Opportunity Commission Clearinghouse, P.O. Box 541, Annapolis Junction, MD 20701.

GINA WEBINAR

On November 18, Thompson Hine is offering a free webinar, “What Employers Need to Know About the Genetic Nondiscrimination Act of 2008: From Employment Discrimination to Health Plan Administration.” For more information or to register, click [here](#).

FOR MORE INFORMATION

For more information, please contact any member of our **Labor & Employment** practice group.

Thompson Hine sends Employment @lerts as a service. If you do not wish to receive future @lerts, please email Heidi.Moreno@ThompsonHine.com with the phrase “Unsubscribe: Employment @lert” as the subject line.

This advisory may be reproduced, in whole or in part, with the prior permission of Thompson Hine LLP and acknowledgement of its source and copyright. This publication is intended to inform clients about legal matters of current interest. It is not intended as legal advice. Readers should not act upon the information contained in it without professional counsel.

This document may be considered attorney advertising in some jurisdictions. Some of the design images and photographs in this document may be of actors depicting fictional scenes.

© 2009 THOMPSON HINE LLP. ALL RIGHTS RESERVED.