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MILITARY SPOUSES GRANTED LIMITED LEAVE RIGHTS

By Tiana Murillo and Anthony J. Amendola

Governor Schwarzenegger recently signed into law a bill that creates a new leave of absence right for employees married to members of the Armed Services. AB 392, which was passed as an urgency statute and takes effect immediately, adds Section 395.10 to the Military and Veterans Code.

Scope of the New Law

Covered Employers: The new statute applies to employers with 25 or more employees. Although the law does not specify, it appears that the law would apply to any such employer, even if fewer than 25 employees actually work in the state.

How Much Leave: Employers must provide an eligible employee with up to 10 days of unpaid leave whenever the employee's spouse who is a member of the Armed Forces, National Guard, or Reserves *is on leave from deployment during a period of military conflict*. Thus, 10 days of leave must be provided to the employee for each leave from deployment provided by the military to the employee's spouse.

Qualified Employee: To be eligible for leave, the employee must work an average of 20 or more hours per week and must be married to a "qualified member" of the Armed Services, defined as either a member of the United States Armed Forces, National Guard, or Reserves who has been deployed during military conflict to an area designated by the President as a combat zone.

Notice and Documentation: The employee must give the employer notice of intention to take the leave, within two business days of receiving official notice that the member-spouse will be on leave from deployment. Presumably, oral notice of the need for leave is sufficient. Additionally, the employee must submit to the employer written documentation certifying that the member-spouse will be on leave from deployment during the time for which the employee has requested the leave. Presumably, any official document from the military will be sufficient to establish that the employee's spouse is on leave from deployment.

No Retaliation: An employer shall not retaliate against a qualified employee for requesting or taking leave provided for in the statute.

Similar Leave Laws

While most employers are aware of their obligations to provide medical and family care, pregnancy, and military leaves to eligible employees, AB 382 adds to the ever growing list of California laws that obligate employers to provide protected time off for various other family and personal circumstances. Accordingly, employers should review their policies and practices to ensure that they are providing the following:

Kin Care (Labor Code § 233) Any employer, regardless of size, that provides sick leave must allow employees to use up to one-half of their accrued time off for absences required to attend to an ill or injured child, parent, spouse, domestic partner, or domestic partner's child.

Jury Duty and Witness Leave (Labor Code § 230) No employer, regardless of size, may discharge or discriminate against any employee who takes time off of work to serve on a jury or as a witness in any judicial proceeding, provided that the employee gives reasonable notice of the need to take such leave.

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Q: SHOULD THE NEW LEAVE OF ABSENCE RIGHT CREATED BY AB 392 BE REFERENCED IN EMPLOYEE HANDBOOKS?

A: WHILE THE NEW LAW DOES NOT OBLIGATE EMPLOYERS TO REFERENCE MILITARY SPOUSE LEAVE, EMPLOYERS SHOULD CONSIDER INCLUDING A REFERENCE TO THIS LEAVE RIGHT (ALONG WITH THE OTHERS DISCUSSED) IN ORDER TO ENSURE THAT ALL EMPLOYEES, INCLUDING MANAGEMENT, ARE AWARE OF THE FACT THAT THESE RIGHTS EXIST. IN THE ABSENCE OF CLEAR POLICIES, SUPERVISORS MAY INADVERTENTLY DENY REQUESTS FOR LEGALLY PROTECTED TIME OFF, SUBJECTING THE EMPLOYER TO CLAIMS.

Q: IF ANY EMPLOYEE HAS TAKEN A FMLA OR OTHER EXTENDED LEAVE, MAY AN EMPLOYER DENY MILITARY SPOUSE LEAVE DURING THE SAME CALENDAR YEAR?

A: NO. THE RIGHTS CREATED BY AB 392 ARE INDEPENDENT OF ANY OTHER RIGHTS AN

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Time Off for Voting (Elections Code § 14001) All employers, regardless of size, generally must allow employees up to two hours off to vote in a statewide election, if an employee does not have sufficient time outside of working hours to do so.

Victims of Crime (Labor Code § 230.2) All employers, regardless of size, must provide time off to an employee who is a victim, or whose spouse, domestic partner, parent, sibling, or child is a victim, of a violent or serious felony, in order to attend judicial proceedings related to such a crime.

Victims of Domestic Violence or Sexual Assault (Labor Code § 230.1) All employers, regardless of size, must allow victims of domestic violence to take time off to obtain relief, such as a restraining order, to help ensure the employee's health, safety, and welfare, or that of the employee's children. Additionally, employers with 25 or more employees also must permit employees to take time to seek medical attention for injuries caused by domestic violence, to obtain shelter services or psychological counseling, or to participate in safety planning.

Leave for Volunteer Civil Service (Labor Code § 230.3) All employers, regardless of size, must provide leave to employees who require time off to perform emergency duty as a volunteer firefighter, reserve peace officer, or emergency rescue personnel. In addition, employers with 50 or more employees must allow an employee who is a volunteer firefighter to take up to 14 days off per year to engage in law enforcement or firefighting training.

Leave for Child's Suspension (Labor Code § 230.7) All employers, regardless of size, must provide time off to an employee who is the parent or guardian of a child who has been suspended from school, if the employee is requested to appear at the school in connection with the suspension.

Leave for School Activities (Labor Code § 230.8) Employers with 25 or more employees must allow an employee who is the parent or guardian of a child in grades K-12, or in a licensed day-care facility, to take up to 40 hours off per calendar year to participate in school-sponsored activities.

Drug and Alcohol Rehabilitation (Labor Code § 1025) Provided that no undue hardship is imposed on the employer, an employer with 25 or more employees must reasonably accommodate any employee who volunteers to enter an alcohol or drug rehabilitation program. Such reasonable accommodation includes time off with or without pay.

Adult Literacy Programs (Labor Code § 1041) Absent undue hardship on an employer, employers of 25 or more employees must assist and reasonably accommodate any employee who reveals that she/he is illiterate and asks for assistance in enrolling in an adult literacy program. Reasonable accommodation may include providing time off without pay to participate in such a program.

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EMPLOYEE MAY HAVE TO TAKE PROTECTED TIME OFF FROM WORK. THUS, AN EMPLOYEE MAY EXERCISE ALL OF HIS OR HER RIGHTS UNDER EACH OF THE LAWS DISCUSSED IN THE ALERT, AS WELL AS PREGNANCY DISABILITY LEAVE AND/OR FMLA LEAVE, DURING THE SAME YEAR.

SEXUAL HARASSMENT PREVENTION TRAINING

IN ORDER TO ASSIST OUR CLIENTS AND FRIENDS IN COMPLYING WITH THE TRAINING REQUIREMENTS OF CALIFORNIA LAW, MS&K IS PLEASED TO OFFER SEXUAL HARASSMENT PREVENTION TRAINING FOR SUPERVISORS.

When: Tuesday, December 4, 2007
Registration 8:30 - 9:00 a.m.
Program 9:00 - 11:00 a.m.

Where: MS&K
11377 W. Olympic Boulevard
Los Angeles, CA 90064

Cost: \$50 per attendee

RSVP: Mary Marshall
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(310) 914-7981 by November 27

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