



HR CORNER

FEES & BURGESS, P. C.



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Congress Amends Family Medical Leave for Servicemembers

Fees & Burgess, P.C.,
Emphasizes:

In 2008, Congress amended the Family and Medical Leave Act to include provisions governing servicemembers in the U.S. military. These leave provisions allowed spouses, children, and parents of certain servicemembers to take up to 26 weeks of unpaid leave to help care for servicemembers in various situations.

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On October 28, 2009, President Obama signed the National Defense Authorization Act for fiscal year 2010, which included language introduced into Congress this summer as the Supporting Military Families Act of 2009 (Act). This Act expands the rights of families of servicemembers and makes several major changes to the military leave allowances under the Family and Medical Leave Act.

First, the Act expands the length of time in which an employee may use the military leave. Originally, family members could only use the leave for military members on active duty; now, employees may use the leave for up to five years after their family members' separation from military service. Secondly, employees may take leave when a family member is deployed to a foreign country. Previously, leave was only available when a family member was called to active duty in the National Guard or other military reserves.

There is no effective date in the proposed law. As such, the law became effective immediately upon the President's signature. This means that employers should be informing employees on the new status of the law and updating policy manuals and employee handbooks. With the five-year expansion of benefits under this law, more employees will be taking advantage of its benefits, and employers should make certain that they have the proper policies, paperwork, and procedures in place to facilitate a smooth transition to these new requirements.

EEOC Issues Guidance on Waivers of Discrimination Claims in Severance Agreements

This past summer, the Equal Employment Opportunity Commission (EEOC) issued guidance to employees for understanding waivers of discrimination claims in severance agreements. While this guidance is not binding law, it provides helpful advice in explaining the agency's interpretation of the various discrimination laws. Further, it helps companies choose a strategy in drafting severance agreements that will not catch the unfavorable attention of the EEOC.

Release agreements accompanying severance packages serve as helpful tools to lessen or avoid corporate liability after an employee leaves a company's workforce. However, there are many legal guidelines of which employers should be aware.

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Failure to follow some of these guidelines may counteract any perceived benefits in the release agreement, while failure to follow other guidelines may actually subject a company to additional liabilities. Several laws impact waivers in severance agreements, including Title VII of the Civil Rights Act (Title VII) covering race, religion, national origin, and gender discrimination claims, among others; the Age Discrimination in Employment Act (ADEA) covering age discrimination claims; and the Equal Pay Act (EPA) covering certain pay discrimination issues.

The EEOC notes that, generally, waivers in release agreements are valid where the employee signs the waiver “knowingly and voluntarily.” To determine what constitutes a “knowing and voluntary” release, the various discrimination statutes have different standards. The ADEA includes its own express requirements, while case law has determined the standards applicable to claims under Title VII and the EPA. The basic rule is that drafters must use “plain English,” and employers must provide sufficient time for the employee to review the agreement and consult with an attorney if they so choose. The EEOC guidance further notes that courts may consider whether the employee had any input in negotiation of the agreement terms, and the extent of consideration offered in exchange for signing the agreement (meaning the amount of severance funds paid the employee).

The EEOC also discusses the potential for retaliatory language in severance agreements. Often, boilerplate severance agreements include language barring the employee from filing suit against their former employer for issues occurring during employment. However, recent changes to the definition of “retaliation” prohibit employees from waiving their right to file a basic charge of discrimination with the EEOC. (The definition of retaliation includes employer actions that may dissuade an employee from filing a charge of discrimination.) As such, any language that attempts to prohibit an employee from filing a charge of discrimination will be invalid, and it potentially may create liability in the form of a retaliation claim against the employer. Employers should be careful to remove this language from its boilerplate documents. While an employer can limit an employee’s ability to recover monetary damages from any issues resulting from the charge of discrimination, employees still have the right to file the charge with the EEOC.

The EEOC guidance also includes a summary of requirements for waivers under the ADEA. This is particularly helpful as a checklist for employers to ensure that their basic severance documents will hold-up in court.

While the new EEOC guidance does not provide any new legal requirements or change the landscape of laws governing severance agreements, it does provide a helpful review of the legal issues surrounding such release agreements. To help ensure that release agreements remain legally binding and valid, employers should carefully review this guidance, and the accompanying checklists, so that release agreements may continue to protect your company instead of harming it.

The EEOC guidance is available here:

http://www.eeoc.gov/policy/docs/qanda_severance-agreements.html



Fees & Burgess, P.C.—Calendar of Events

Fees & Burgess, P.C., is proud to present, or participate in the presentation of, the following upcoming seminars/webinars:

Coming in 2010

Watch for Dates by checking our website at feesburgess.com

January 13, 2010—Chamber of Commerce of Huntsville/Madison County

[WBCNA/ISM Program](#)

This event is hosted by Women’s Business Center of North Alabama (WBCNA) and the Institute for Supply Management (ISM). Jeff Roth’s topic will be on, Small Business Legal “Need to Know”.

For more information please contact the Chamber of Commerce phone:(256) 535-2051 or WBCNA at phone:(256) 535-2038 e-mail: info@wbcna.org.

Holiday Inn Research Park - Huntsville, Alabama

[International Commercial Contracting: Identifying, Avoiding, and Managing Risk Areas](#)

This four-part course provides a practical introduction to international contracting, focusing particularly on risk identification and avoidance. Attendees will gain an understanding of the laws and provisions governing international agreements, and how international contractual relationships differ from domestic counterparts. The course will provide a solid grasp of the concepts, theories, and practical considerations necessary for drafting, interpreting, and negotiating international contracts. This course can be used toward ISM and NCMA credit.

Session 1: Introduction to International Contracting [Click here for details.](#)

Session 2: Drafting 101 [Click here for details.](#)

Session 3: Drafting 101 Continued [Click here for details.](#)

Session 4: Special Considerations in International Contracting [Click here for details.](#)

Huntsville, Alabama

[Negotiation and Resolution of Federal Government Contractor Claims under the Contracts Disputes Act](#)

Attendees of this program will learn how to prepare, negotiate, and submit contract disputes to the government for resolution under the Contract Disputes Act of 1978, as well as options for appealing claims denied by the government.

This course is designed to meet the requirements of the National Contract Management Association’s (NCMA) certification programs for 1 hour of CPE.

For more information on the topics to be discussed [click here.](#)

If you would like more information on these seminars, please go to www.feesburgess.com



SPEAKERS

Fees & Burgess, P.C., provides speakers, training programs, seminars, and webcasts for various trade associations; business groups; and clients. For information regarding a program, contact Sylvia Taylor at staylor@feesburgess.com.

NEWSLETTERS

Fees & Burgess, P.C., also publishes *F&B Quarterly Bytes*, focusing on multiple practice areas; and *F&B SCM Memo*, focusing on the supply chain management industry. To receive any of these e-newsletters, please e-mail Sylvia Taylor at staylor@feesburgess.com with your contact information.

To remove your name from our mailing list, please e-mail staylor@feesburgess.com.

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“No representation is made that the quality of legal services to be performed is greater than the quality of legal services performed by other lawyers.”