

EDITOR IN CHIEF  
Robin Shea, Winston-Salem, NC

MARKETING DIRECTOR  
Victoria Whitaker, Atlanta, GA

## Client Bulletin #378

### HAPPY HOLIDAYS! CONGRESS EXPANDS THE FMLA AND OTHERWISE KEEPS US HOPPING

by Robin E. Shea  
Winston-Salem, NC

It appears that Congress has been caught up in the holiday rush. Two significant pieces of legislation passed various legislative hurdles last week and are expected to be signed into law by President Bush. The third is less likely to survive, but employers should be aware of it and express their opposition while there is still time.

FMLA expanded to protect family members of military. In the first-ever legislative expansion of rights under the Family and Medical Leave Act, the House voted to provide rights for a “qualifying exigency” to spouses, parents, or children of reservists or members of the National Guard who are called to active duty in the U.S. military. The law also provides a one-time 26 weeks’ leave in a 12-month period for spouses, parents, or children, or “next of kin,” to care for a family member who has become sick or injured while serving in the military. The FMLA provisions were included in the 1,400-page National Defense Authorization Act, which passed the Senate 90-3 on Friday. To see the FMLA provision, [click here](#). President Bush is expected to sign the bill into law before Christmas. The effective date is unclear, but it is possible that it will become effective immediately upon signing.

Bill to enhance attorney-client privilege, work product protections clears Senate Judiciary Committee. A proposed new Federal Rule of Evidence 502 has cleared the Senate Judiciary Committee and has broad bipartisan support. S. 2450, designed to update existing law on the inadvertent waiver of attorney-client privilege and work product protections, is expected to be enacted and is supported by President Bush. Among other things, the bill limits the effect of inadvertent disclosures made in connection with federal proceedings, and says that inadvertent disclosure does not result in waiver of privilege or work product protections if “the holder of the privilege or protection took reasonable steps to prevent disclosure” and “the holder promptly took reasonable steps to rectify the error.” With the volumes of documents that must be disclosed in our modern era of electronic discovery, this clarification is most welcome.

Write your Congressperson! ADA Restoration Act would eliminate requirement that individual be “substantially limited.” The ADA Restoration Act is reportedly blazing through Congress and has bipartisan support, as well as the support of former president George Herbert Walker Bush . . . although not his son. The Act would include within its definition of “disability” anyone with a physical or mental impairment, period. It would remove the

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requirement that an individual with a “disability” be “substantially limited,” and would legislatively overrule *Sutton v. United Air Lines, Inc.*, in which the Supreme Court held that mitigating measures had to be considered in determining whether an individual was disabled. Needless to say, this bill would dramatically expand the scope of the ADA and render it akin to the California disability-rights statute. To view the House version of the bill, [click here](#). This is a good time for employers to make their views known to their representatives.

If you have a question about any of these bills, please feel free to contact the Constangy attorney of your choice. Constangy, Brooks & Smith, LLC, wishes all of its clients and friends a happy holiday season, and a happy and prosperous 2008.

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