

DOL's new FMLA forms intended to improve user experience



Miriam L. Rosen | Friday, July 24, 2020

In a diversion from its now regular stream of COVID-19 related guidance, the Department of Labor recently turned its attention to the Family and Medical Leave Act (FMLA). On July 16, 2020, the DOL's Wage and Hour Division announced what it called "significant steps to improve workers' and employers' experiences with the use of the FMLA" by issuing new model notices and forms.

The [new model notices and forms](#) include documents that meet the FMLA notice requirements, including [General Notice](#), the [FMLA poster](#), [Eligibility Notice](#), [form WH-381](#), [Rights and Responsibilities Notice](#), [form WH-381](#), and a [Designation Notice](#), [form WH-382](#). In addition, the DOL has issued five new model medical certification forms, including an updated [Employee's serious health condition](#), [form WH-380-E](#) and a [Family member's serious health condition](#), [form WH-380-F](#).

The DOL has called the new forms "simpler and easier to understand for employers, leave administrators, healthcare providers, and employees seeking leave." Significant updates include replacing questions that required written responses with statements that can be completed by checking a box, and – in support of minimized contact – electronic signature features. According to the DOL, the changes are intended to reduce the amount of time it takes a healthcare provider to provide information and to help leave administrators review and communicate information to employees more directly and with greater clarity.

Use of the DOL template forms has always been optional and that remains the case. This means that an employer can use the DOL model forms, customize those forms, or create their own forms as long as an

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employer's documents are consistent with FMLA regulatory guidance.

Employers may begin using the new forms immediately. However, because the forms are optional, employers may continue to use the "old" forms or, as noted, craft their own forms. In deciding what forms to use, it is important for employers to consider what is the best way for their organization to obtain accurate, complete, and sufficient information to assess whether employees qualify for FMLA leave and the nature of the time off required – of course, all consistent with the FMLA regulations.

In addition to the new notices and forms, the DOL also published a request for information seeking input on how the FMLA process is working for employers and employees and whether aspects of the process can be improved. In its information request, the DOL asks employers and employees for general feedback and also seeks responses on specific areas that present administrative challenges, including:

1. What, if any, challenges have employers and employees experienced in applying the regulatory definition of a serious health condition?
2. What, if any, specific challenges or impacts do employers and employees experience when an employee takes FMLA leave on an intermittent basis or on a reduced leave schedule?
3. Best practices and suggestions to improve implementation of the Act's intermittent leave provisions.
4. What, if any, specific challenges do employers and employees experience when employees request leave or notify their employers of their need for leave?
5. Specific information and any available data regarding other specific challenges that employers experience in administering FMLA leave or that employees experience in taking or attempting to take FMLA leave.

The DOL's questions hit on some of the most vexing FMLA issues for employers, such as notice of leave time and use of intermittent leave. Whether the DOL will be able to implement changes to make the FMLA leave process easier to administer remains to be seen.

The McDonald Hopkins Labor and Employment Team will continue to monitor developments related to the FMLA and will provide updates. Contact your McDonald Hopkins employment attorney with any questions on the new FMLA forms or other employment matters.



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