

NEW FMLA FORMS AVAILABLE FROM DOL

Jul 21, 2020

First, the bad news: As if HR personnel who are responsible for managing leave requests aren't already stretched thin due to COVID-19 issues, they now have another item for their to do list: Become familiar with, and begin using, new Family and Medical Leave Act ("FMLA") forms issued late last week by the federal Department of Labor ("DOL").

Now, the good news: Overall, despite being longer and wordier, the new FMLA forms appear likely to be embraced by employers, employees, and medical providers alike for being more clear, helpful, and user-friendly than prior versions.

The new FMLA forms are available on the DOL's [website](#). They include revised versions of the following forms:

- **Combined Eligibility Notice / Notice of Rights and Responsibilities** ([WH-381](#));
- **Designation Notice** ([WH-382](#));
- **Certification of Health Care Provider** (one for employee's own serious health condition; one for leave relating to care of a covered family member; [WH-380 E](#) and [WH-380 F](#));
- **Certification of Military Family Leave** (including forms relating to Qualifying Exigency leave and leave relating to a Current Servicemember or Veteran; [WH-384](#) and [WH-385/WH-385-V](#)).

One overarching revision is that each form now includes more "explanatory" language relating to FMLA rights and obligations. For example, the Eligibility Notice includes a description of the eligibility rules and definitions of such key terms as "spouse," "child" and "parent." The Rights and Responsibilities Notice (which, as before, is combined with the Eligibility Notice) includes expanded explanations regarding the substitution of paid leave. The medical certifications now include the definition of "serious health condition."

Another broad change involves a new section on the Designation Notice relating to "Incomplete or Insufficient" medical certifications. Space is provided for the employer to explain exactly what information is still needed and when the information is due. As a result of this new section, employers may need to provide employees with the Designation Notice on more than one occasion

relating to the same request for leave / serious health condition, to the extent that the employer first needs more information, and then subsequently approves or denies the leave request. As a result, employers will need to take care in completing only those sections of the form that are applicable; for example, Section III, relating to “FMLA Leave Approved,” will not be completed if the employer is seeking complete and sufficient information in Section II.

The medical certification forms have been significantly overhauled, and will require health care providers to more clearly identify the type of medical condition at issue and the type and amount of leave needed. The forms also emphasize that health care providers must provide their “best estimates” regarding the need for leave even if the specific dates and length of leave are unknown. In addition, the certification forms now include explicit references to the Genetic Information Nondiscrimination Act (“GINA”), informing health care providers not to provide information restricted by GINA.

Although “optional,” it is generally a best practice for employers to use the current versions of the DOL’s template forms. This allows for consistency and ensures that all necessary “notice” information is provided to the employee, also that only the permitted information is obtained from the employee and/or applicable medical provider.

Bryan Cave Leighton Paisner LLP has a team of knowledgeable lawyers prepared to assist HR professionals. If you or your organization would like more information on FMLA requirements or any other employment issue, please contact an attorney in the Employment and Labor practice group.

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