

HR Heads-up

PERIODIC UPDATES ON IMPORTANT HR LEGAL ISSUES

AUGUST 6, 2020

DOL Revises FMLA Forms and Seeks Feedback on Possible Changes to FMLA Regulations

On July 16, 2020, the DOL [announced](#) an update to the model Family and Medical Leave Act (FMLA) notices and forms that employers may use to comply with the federal FMLA. The new forms may be found [here](#), along with a Q&A. While use of the model forms is not mandatory and employers may continue to use their own forms or older versions of prior model forms if desired, the updated forms make some changes that employers may find helpful.

The updated eligibility notice form provides more information on the employee's notice of rights and responsibilities and provides a clearer explanation for how employer-provided paid leave runs concurrently with FMLA. The designation notice form now clarifies employers are required to designate leave as FMLA whenever the employee qualifies, even if the employee does not want FMLA to apply, and better outlines the steps employees must take to remedy insufficient certifications. The DOL made additional changes to the medical certification form to include information that a medical certification may not be requested for leave to care for/bond with a healthy newborn and requires an estimate for the employee/employee's family member future treatment for a serious health condition. Employers should note that Wisconsin has a long-standing medical certification form for leaves covered by the Wisconsin FMLA.

In addition to the form updates, the DOL published a [request for public comment](#) seeking both employers' and employees' opinions on the following topics:

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. What, if any, specific challenges do employers and employees experience when employees request leave or notify their employers of their need for leave? For example, do employees convey sufficient information to notify employers that the employee may have an FMLA-qualifying reason for leave or that the employee is requesting FMLA leave?
4. What, if any, challenges employers and employees have experienced with the medical certification process that are not addressed by the newly revised forms?

5. Whether it would be helpful to provide additional guidance regarding the interpretations contained in any of the DOL's FMLA opinion letters issued over the past two years.
6. 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.

All comments are due to the DOL on or before September 15, 2020. Once the public comment period has closed, the DOL may or may not release proposed revisions to the FMLA regulations based on the feedback received. Boardman Clark's Labor & Employment team will continue to provide updates on the DOL's ongoing review of the FMLA and is available to assist employers in navigating the FMLA regulations.

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