

JULY 21, 2020

NEW FMLA FORMS PUBLISHED BY THE DEPARTMENT OF LABOR

The U.S. Department of Labor ("DOL") Wage and Hour Division has updated its FMLA forms in order to make them more usable and streamlined after receiving substantial input from employers, industry associations, individual employees, worker advocacy groups, law firms and other interested members of the public. The DOL also announced that it would be seeking the public's feedback on the FMLA's regulations.

FMLA FORMS ARE UPDATED!

On August 5, 2019, the DOL began soliciting comments from the public on the FMLA's optional use forms. Final versions of the forms have now been published! The new FMLA forms don't make any substantive changes to the information collected. However, the revisions are intended to make the FMLA forms "easier to understand for employers, leave administrators, health care providers, and employees seeking leave."

The FMLA does not require that any specific form or format (including the DOL's suggested FMLA forms) be used. However, many employers who are covered by the FMLA use the forms suggested by the Wage and Hour Division, although employers are free to develop their own forms if they wish. Given the fact that the forms have now been revised, covered employers should review all of their FMLA forms to make sure they are up to date.

The forms can be found on the DOL website or can be accessed by clicking on the links below:

- Certification of Health Care Provider for Employee's Serious Health Condition (**WH-380-E**);
- Certification of Health Care Provider for Family Member's Serious Health Condition (**WH-380-F**);
- Certification of Qualifying Exigency for Military Family Leave (**WH-384**);
- Certification for Serious Injury or Illness of a Current Servicemember for Military Family Leave (**WH-385**);
- Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave (**WH-385-V**);
- Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act (**WH-381**); and
- Designation Notice under the Family and Medical Leave Act (**WH-382**).

Note that the forms are not applicable to the Families First Coronavirus Response Act ("FFCRA"). As noted by the DOL in their [Questions and Answers about FMLA forms](#), FFCRA documentation requirements can be found at 29 CFR 826.100 or at www.dol.gov/agencies/whd/pandemic/ffcra-questions.

DOL REQUESTS INFORMATION FROM THE PUBLIC ABOUT THE FMLA REGULATIONS

The DOL also announced today that it would be seeking information from the public regarding the FMLA regulations. The Request for Information ("RFI"), published on July 17, 2020 in the Federal Register, [states](#) that the purpose of the RFI is to "gather information concerning the effectiveness of the current regulations and to aid the Department in its administration of the FMLA," and to help the DOL "identify topics for which additional compliance assistance could be helpful, including opportunities for outreach to ensure employers are aware of their obligations under the law and employees are informed about their rights and responsibilities in using FMLA leave." The DOL has specifically identified certain questions it is asking the public to weigh in on, including:

- What, if any, challenges have employers and employees experienced in applying the regulatory definition of a serious health condition?
- 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?
- What, if any, specific challenges do employers and employees experience when employees request leave or notify their employers of

their need for leave?

- What, if any, challenges are employers and employees experiencing with the medical certification process that are not addressed by the revised FMLA forms?
- Would it be helpful for the DOL to provide additional guidance regarding the interpretations contained in any recently published opinion letters through the regulatory process?

The DOL will be accepting comments from the public through September 15, 2020.

If you have any questions, please contact Mary Kate Liffbrig at mliffbrig@hallrender.com or your regular Hall Render attorney.

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