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FMLA UPDATES:

U.S. Department Of Labor Wage and Hour Division Issues New Optional-Use Forms and a Request for Information Seeking Further Input

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The U.S. Department of Labor Wage and Hour Division (WHD) published the following notice and certification forms to assist covered employers in complying with the Family and Medical Leave Act of 1993 (FMLA). The updated FMLA forms, which are effective June 2020, are designed to address feedback and comments from employees, employers, healthcare professionals, and the general public and to make the forms easier to understand and less time-intensive. Use of these revised forms is *optional*. Employers can choose to use the legacy forms, the updated forms, or any other format that communicates the required information.

Notice of Eligibility & Rights and Responsibilities under the Family and Medical Leave Act (WH-381)

- If used, this form should be completed by the employer, provided to the employee requesting FMLA leave, and maintained by the employer for three years.
- Use of the form satisfies the disclosure obligations under 29 U.S.C. § 2617 and 29 C.F.R. § 825.300(b-c) (notice of eligibility for FMLA protection and explanation of rights).
- The WHD estimates that completion of the new form will take 10 minutes.

Designation Notice (WH-382)

- If fully completed, this form satisfies an employer's disclosure obligations under 29 C.F.R. §§ 825.300(d), 825.301, and 825.305(c), which require:
 - If a request for leave qualifies as covered leave under FMLA, the employer **must**, as soon as possible, designate the leave as FMLA-protected and inform the employee of the amount of leave that will be counted against the FMLA leave entitlement.

This newsletter is designed to provide one perspective regarding recent legal developments, and is not intended to serve as legal advice, nor does it establish an attorney-client relationship with any reader of the article where one does not exist. Always consult an attorney with specific legal issues.

- Once the employee provides adequate information to ascertain FMLA eligibility, WH-382 (or its equivalent) must be provided within five business days.
- Employers may request a certification to support the request for FMLA leave. If the employer determines that the certification is lacking, the employer must provide written notice of the additional information needed to complete the certification.

Optional Certification Forms

- **WH-380-E**, for leave requests involving an employee medical condition
- **WH-380-F**, for leave requests involving the medical condition of an employee’s family member
- **WH-384**, for leave requests arising from the foreign deployment of an employee’s spouse, child, or parent
- **WH-385**, for leave requests involving serious injury or illness of a family member who is active duty military
- **WH-385-V**, for leave requests involving serious injury or illness of a family member who is a covered veteran

Each of these forms is accessible through the following [link](#).

Following the publication of the updated FMLA forms, the WHD published a Request for Information (RFI) to gather public feedback regarding the effectiveness of the current FMLA regulations and to aid in its administration. The WHD asks for feedback, comments, specific information, and data on the following topics:

- challenges experienced by employers and employees with respect to the definition of “serious health condition” as defined by the regulations
- challenges, impacts, best practices, and suggestions related to intermittent leave and reduced leave schedules
- challenges experienced by employers and employees with respect to requests for leave, including the sufficiency of information provided by employees, notification of eligibility, awareness of procedural requirements and obligations
- challenges experienced by employers and employees with the medical certification process, including issues establishing or determining that a serious health condition exists and the amount of leave needed
- challenges in administering FMLA leave or taking/attempting to take FMLA leave
- questions or guidance regarding the interpretations in the WHD’s FMLA opinion letters

Written comments must be submitted on or before September 15, 2020. **Copies of the complete RFI are available [here](#).**

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Neither the optional-use forms nor the RFI address issues unique to the Families First Coronavirus Response Act (FFCRA), the temporary amendments to FMLA (EMLEA), or the COVID-19 pandemic. **Updated information on these subjects is available [here](#).**

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