

Date: January 7, 2009

Re: Changes to The Family and Medical Leave Act

What The Changes Are:

The Department of Labor's proposed changes to the FMLA become effective on January 16, 2009. While there are many changes, the most significant are as follows:

- If the employer violates FMLA notice provisions, the employee may receive more than 12 weeks leave if the employee is actually harmed.
- “Light-duty” work performed by an employee eligible for FMLA leave does not count against employee's FMLA leave allowance.
- “Serious health condition” has been re-defined to include visiting a health care provider twice in 30-day period for the condition.
- The employer now has 5 days (up from 2) to send out appropriate notices, including a notice that the employer has designated the leave as FMLA leave.
- The employer is required to return deficient medical certifications to employees requesting the leave, and give them 7 days to cure the deficiencies.
- The employer may contact the healthcare provider to clarify and/or verify information on certification. Note: the employee's direct supervisor is not allowed to contact health care provider.
- The employer can ask for fitness for duty certificate for an employee who has taken intermittent leave when reasonable safety concerns exist.

How It Affects Your Business:

Employers must ensure that their FMLA procedures comply with the new regulations. Failing to satisfy the requirements of the new regulations/changes will expose employers to the risk of litigation. Employers should update their policies and procedures, and train employees to comply with the new regulations.

A New Poster & New Forms are Available for Downloading:

A revised [Family and Medical Leave Act \(FMLA\) poster](#), reflecting the recently published final rule, is now available for viewing and downloading from the DOL website (www.dol.gov). Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions.

The Department has provided optional forms for use by employers and employees during the FMLA process:

- The Department has revised its Certification of Health Care Provider form (WH-380), and divided it into two separate forms for an [Employee's Serious Health Condition \(WH-380E\)](#) and a [Family Member's Serious Health Condition \(WH-380F\)](#).
- The Department has also revised its [Notice of Eligibility and Rights and Responsibilities form \(WH-381\)](#).
- The Department has added new forms for [Designation Notice to Employee of FMLA Leave \(WH-382\)](#), [Certification of Qualifying Exigency for Military Family Leave \(WH-384\)](#), and [Certification for Serious Injury or Illness of Covered Service member for Military Family Leave \(WH-385\)](#)

The poster and forms become effective on January 16, 2009. Additional compliance assistance materials are also available on FMLA Final Rule Web site at www.dol.gov/esa/whd/fmla/finalrule.htm.

The information contained in this Bulletin is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.