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New FMLA Regulations: Are You Compliant?

On January 16, 2009, the new Family and Medical Leave Act ("FMLA") regulations will go into effect. The regulations make a number of changes that affect how employers administer FMLA leave. If you are an employer subject to the FMLA be sure to check the United States Department of Labor ("DOL") website to assure that as of January 16, 2009, you are in compliance with the new rules. [FMLA Final Rule Page](#)

The new regulations make a number of changes and clarifications and will typically require that any employee handbook containing an FMLA section be updated. Other recent revisions to the FMLA expand covered leave to include up to 12 weeks in connection with deployment to active service of covered members of National Guard or Reserve units to active service and up to 26 weeks in connection with care for a covered service member with a serious injury or illness.

As employers administer FMLA leave under the revised regulations they must pay particular attention to many new types of notices that must be supplied to employees.

FMLA Poster. A new FMLA poster incorporating the new regulations and changes to the law must both be posted at the worksite. The DOL website provides sample posters at this link: [New Poster](#).

General Notice. General information regarding employee rights and obligations under the FMLA should be published in the employee handbook, or, if one does not exist, should be distributed to current employees and given to each new employee at the time of hire. DOL Fact Sheet #28 will fulfill this requirement. DOL Fact Sheet #28 should also be provided to an employee whenever FMLA leave is requested. The DOL Fact Sheet can be obtained at [Fact Sheet #28](#).

Eligibility Notice; Rights and Responsibilities Notice. When an employee requests FMLA leave or the employer acquires knowledge that employee leave may be for an FMLA purpose, the employer has five business days to provide to the employee a notice explaining FMLA eligibility and a notice to inform the employee of his/her responsibilities under the FMLA. Each notice has certain required elements. The DOL has provided sample forms incorporating the required elements for each of these two notices. The DOL sample forms can be obtained at [Notice of Eligibility and Rights and Responsibilities](#).

Employers may require that an employee's request for FMLA leave due to a serious health condition affecting the employee or a covered family member be supported by a certification

from a health care provider. An employer has five business days after the employee provides notice of the need for FMLA leave to request a medical certification. Due to privacy and anti-discrimination issues employers must be cautious in requesting medical information. The DOL has provided sample forms that can be used to certify an employee's need for FMLA leave in connection with health conditions. [Employee's Serious Health Condition and Family Member's Serious Health Condition forms](#).

Designation Notice. Employers must also notify employees in writing whether or not the requested leave qualifies under the FMLA. This notice must be sent to an employee within five days after the employer learns whether or not the leave is FMLA qualified. This notice must contain required elements, including, among other things, the reasons for any determination that the leave is not FMLA qualified or, if the leave is FMLA qualified, how much leave is available and whether any fitness for duty certification is required. The DOL sample form can be obtained at [Designation Notice](#).

Note that use of the DOL sample forms is not mandatory. However, the forms have been prepared to track the requirements of the new regulations.

The foregoing is only a summary of certain new notice requirements. The new FMLA regulations make many other adjustments and clarifications beyond the notice requirements discussed above.

Please contact JD Lyons at 530-7330 if you need assistance in understanding or implementing the new regulations or if you would like assistance in updating your employee handbooks or other employee communications materials.

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