

## DOL Updates FMLA Notices and Certification Forms

The DOL has released updated model FMLA notices and medical certification forms that will be effective through May 31, 2018. Employers should make sure that they immediately begin to use the updated notices and forms or adapt them to create their own documents for administering FMLA leave.

### Background

The Paperwork Reduction Act of 1995 requires the DOL to submit its Family and Medical Leave Act (FMLA) forms to the Office of Management and Budget (OMB) for approval every three years. In early 2012, OMB approved DOL forms in use since 2009 for an additional three-year period ending February 28, 2015. Although the DOL revised some of the model FMLA forms for employer use in administering FMLA leave in February 2013, the expiration date did not change. When the FMLA forms expired earlier this year, OMB extended the expiration date on a month-by-month basis while the DOL sought renewed approval.



### Updated FMLA Forms

Last month, OMB approved the DOL's updated FMLA notices and medical certification forms, which are effective through May 31, 2018. The DOL has now provided links to them on its website:

- [WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition](#)
- [WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition](#)
- [WH-381 Notice of Eligibility and Rights & Responsibilities](#)
- [WH-382 Designation Notice](#)
- [WH-384 Certification of Qualifying Exigency For Military Family Leave](#)
- [WH-385 Certification for Serious Injury or Illness of Current Servicemember — for Military Family Leave](#)
- [WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave](#)

Each of these FMLA forms has been modified to reflect the 2018 expiration date. Three of the forms — the eligibility and designation notices (WH-381 and WH-382) and the qualifying exigency certification (WH-384) — are otherwise unchanged (although the eligibility notice, previously a three-page form, has been compressed to two pages). The four remaining certification forms have been modified to reference expressly the Genetic Information Nondiscrimination Act (GINA) in instructions to employers and healthcare providers.

### Instructions for Employers

Each of the updated medical certification forms instructs employers to treat records and documents relating to medical certifications, recertifications or medical histories of employees or their family members as confidential medical records. They also remind employers of their compliance obligation to maintain those records separately from personnel files in accordance with GINA as well as the Americans with Disabilities Act.

### Instructions for Healthcare Providers

Each of the updated medical certification forms also instructs healthcare providers completing them not to provide information about genetic tests and services, as defined under applicable DOL regulations. When completing the certification of the employee's own serious health condition, the healthcare provider is additionally cautioned not to provide information about an employee's family medical history.

## In Closing

The new model FMLA notices and certification forms are now available and will be effective through May 2018. While changes in the model forms are relatively modest, employers should make sure that they are using the DOL's latest forms or have updated their own FMLA leave administration forms to include appropriate references to GINA.

#### Authors

Nancy Vary, JD  
Leslye Laderman, JD, LLM

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