

**U.S. Department of Labor Issues
New Streamlined FMLA Forms****September 1, 2020****By [Jeffery M. Landes](#), [Genevieve M. Murphy-Bradacs](#), and [Eric I. Emanuelson, Jr.](#)**

The U.S. Department of Labor (“DOL”) recently published revised Family and Medical Leave Act (“FMLA”) notification and certification forms designed to streamline the FMLA leave process. The forms took effect immediately and are valid through June 30, 2023, or when new forms are released, whichever is earlier. These forms replace the FMLA forms and notice that were set to expire on August 31, 2021. The documents are available as PDFs, which are electronically fillable to support touchless completion and transmission. Employers may use either the forms prepared by the DOL or their own forms, as long as the forms used contain all the information required by the FMLA.

The new forms and notice are available on the DOL Wage and Hour Division’s [web page](#) and can be accessed through the following links:

[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 \(Certification for Serious Injury or Illness of Covered Servicemember – for Military Caregiver Leave\)](#)

In addition, the DOL published a [Request for Information](#) (“RFI”) inviting the public to comment through September 15, 2020, on the effectiveness of current FMLA regulations. As the DOL [noted](#), the RFI seeks to solicit “feedback on any specific challenges or best practices in the use or administration of FMLA leave.” The RFI could mean that more changes are on the horizon, and we will continue to monitor the DOL’s website for further developments.

What Has Changed

According to the DOL, the FMLA forms were revised “to make them easier to understand” for employers, health care providers, and employees seeking leave. All the forms now include a reminder that completed forms should not be returned to the DOL. While the vast majority of the changes have little effect on employers, there are some updates that will require employers to provide additional information to employees and, in some cases, to supply employees with multiple Designation Notices.

Notice of Employee Eligibility and Rights and Responsibilities ([WH-381](#))

The updated form contains additional explanatory language, including with respect to the definitions of “spouse,” “parent,” and “child.” Additionally, where the prior version of the form simply provided a list of employee responsibilities and a list of employee rights, the updated form is organized into several sections based on discrete topics related to the employee’s requested leave and return to work. Finally, *Section I – Notice of Eligibility* more closely tracks FMLA regulations by requiring an employer to specify the number of hours an employee has worked towards the 1,250-hour service requirement, while *Section III – Notice of Rights and Responsibilities* requires an employer to specify whether FMLA leave will run concurrently with disability, workers’ compensation, or any other medical leave provided under state law.

Designation Notice ([WH-382](#))

The updated Designation Notice includes a new section regarding “Incomplete or Insufficient” leave certifications, and provides space for the employer to explain what information is needed to make the certification complete or sufficient.

As a result of this new section, employers may need to provide multiple Designation Notices in connection with the same request for leave. For example, an insufficient certification will result in a Designation Notice that explains the deficiency, and, if the employee submits a new certification that cures the deficiency, a second Designation Notice approving the request will be need to be issued. Accordingly, employers should carefully read the new forms and complete only those sections that are applicable to the particular employee’s request (i.e., when *Section II – Additional Information Needed* is completed, *Section III – FMLA Leave Approved* should be left blank).

Additionally, in a nod to the [March 14, 2019, opinion letter](#) in which the DOL opined that “neither the employee nor the employer may decline FMLA protection for [FMLA-qualifying] leave,” the updated Designation Notice makes clear that employers are obligated to designate leave as FMLA leave whenever leave is for an FMLA-qualifying reason, even if the employee and/or employer do not want the FMLA to apply.

Leave Certifications ([WH-380-E](#), [380-F](#), [384](#), [385](#), [385-V](#))

The new leave certification forms require health care providers to more clearly identify the employee’s qualifying medical condition and the amount of leave the individual needs. If the duration of the leave requested is unknown, health care providers are now asked to offer their “best estimate,” and the form discourages responses suggesting that the duration of incapacity may be a “lifetime” or “indeterminate.”

What Employers Should Do Now

- If you use the DOL's forms in connection with employee leaves of absence under the FMLA, ensure that you utilize the updated forms, which are available at the links provided above.
- Even if you use your own forms for FMLA leave, make sure that you familiarize yourself with the updated information on the DOL's forms.
- Because the FMLA does not require that employers or employees use any specific form or format in connection requests for FMLA leave, do not reject or require employees to resubmit certifications completed on a prior version of the forms.
- Be aware that you must accept a complete and sufficient certification (i.e., one that contains all the information needed to determine if the leave is FMLA-qualifying) regardless of the format.
- Consider submitting comments to the RFI, either electronically or by mail, on or before September 15, 2020.

For more information about this Advisory or if you have any questions related to the FMLA, the DOL's new forms, or submitting comments to the RFI, please contact:

Jeffrey M. Landes

New York
212-351-4601
jlandes@ebglaw.com

Genevieve M. Murphy-Bradacs

New York
212-351-4948
gmurphybradacs@ebglaw.com

Eric I. Emanuelson, Jr.

New York
212-351-3759
eemanuelson@ebglaw.com

This document has been provided for informational purposes only and is not intended and should not be construed to constitute legal advice. Please consult your attorneys in connection with any fact-specific situation under federal law and the applicable state or local laws that may impose additional obligations on you and your company.

About Epstein Becker Green

Epstein Becker & Green, P.C., is a national law firm with a primary focus on health care and life sciences; employment, labor, and workforce management; and litigation and business disputes. Founded in 1973 as an industry-focused firm, Epstein Becker Green has decades of experience serving clients in health care, financial services, retail, hospitality, and technology, among other industries, representing entities from startups to Fortune 100 companies. Operating in locations throughout the United States and supporting domestic and multinational clients, the firm's attorneys are committed to uncompromising client service and legal excellence. For more information, visit www.ebglaw.com.