

# Electronic Alert

Volume 23, Issue 41

July 17, 2020

## U.S. DOL Issues New FMLA Forms & Seeks Comments for FMLA Rule Changes

By Amy Angel & Bruce Garrett

The U.S. Department of Labor (DOL) announced that new forms are now available for employers to use for leave covered by the Family Medical Leave Act (FMLA). The DOL also signaled more substantive changes to FMLA by publishing a request for public comment “concerning the effectiveness of the current regulations to aid the department in its administration of the FMLA.”

### **New FMLA Forms:**

The DOL describes the new forms as “simpler and easier for employees, employers, leave administration and healthcare providers to understand and use.” It is important for employers to remember that these forms are optional, and employees cannot be required to use the forms in order to have their FMLA leave approved. Noteworthy changes to the forms include:

- More checkboxes for employers and employees to precisely answer leave questions.
- Information detailing under what circumstances it is appropriate for employers to obtain follow-up information from health care providers.
- Additional language that indicates employers are obligated to designate FMLA leave “whenever leave is covered by FMLA.” Note that in the Ninth Circuit, which includes Oregon and Washington, an employee has the right to decline FMLA leave even when the leave is covered by FMLA.
- Additional language about what steps employers should take to resolve incomplete certifications.

As employers familiarize themselves with these new forms, they should seek guidance from counsel to ensure that they are properly following FMLA standards and considering the interaction with applicable state laws such as the Oregon Family Leave Act.

### **DOL’s Request for Public Comment:**

The DOL also announced that, as part of its regular review of its regulations, it is seeking public comment to consider future changes to its administration of FMLA.

Highlights of the specific provisions on which the DOL is seeking comment include:

- **Serious Health Condition Definition:** whether employers and employees believe that certain medical conditions should or should not qualify as a “serious health condition.”
- **Certification Process:** what, if any, challenges employers face with the medical certification process.

- **Intermittent FMLA Leave:** whether intermittent leave presents challenges to employers and employees concerning scheduling, and what best practices and suggestions could improve implementation of intermittent leave.
- **Employee Notice Requirements:** whether changes should be made to timing and reporting requirements when employees seek FMLA leave.

The DOL is accepting comments submitted on or before September 15, 2020. Comments must reference the Regulatory Information Number, RIN 1235-AA30, and can be submitted [here](#).

*For more information on leave administration or the DOL's new FMLA forms, contact Amy Angel at 503-276-2195 or [aangel@barran.com](mailto:aangel@barran.com).*