

# DOL Updates FMLA Forms and Seeks Input on Making Improvements

By Lisa Nagele-Piazza, J.D., SHRM-SCP

July 17, 2020

**T**he U.S. Department of Labor (DOL) has updated certain optional Family and Medical Leave Act (FMLA) forms that employers and workers can use to coordinate leave requests. The department is also requesting input from the public to improve FMLA regulations and administration.

The DOL said the new forms are "simpler and easier for employees, employers, leave administrators and health care providers to understand and use" and "include more questions that users can answer by checking a response box and electronic signature features to reduce contact."

The DOL will also publish a request for information (<https://www.federalregister.gov/documents/2020/07/17/2020-14873/family-and-medical-leave-act-of-1993>) in the *Federal Register* on July 17 asking for feedback from employers, employees and other members of the public on their challenges with FMLA administration and recommendations for best practices.

"Making application and administration of the Family and Medical Leave Act more efficient and seeking public input for continued improvements ensures the effective implementation of the law and compliance with it," said Cheryl Stanton, the DOL's Wage and Hour Division administrator.

## Electronic Forms

Businesses with at least 50 employees must provide up to 12 weeks of unpaid leave a year to eligible workers to treat their own illness, to care for a sick relative or for baby bonding. Workers also may be eligible to use FMLA leave when a family member is deployed by the military, and certain eligible employees may take up to 26 weeks of leave in a year to care for an ill or injured military service member.

When employees request leave, employers typically provide a notice about FMLA eligibility, rights and responsibilities, as well as a medical certification form. Employers are not required to ask for medical certification, so long as the company has enough information to determine whether the absence qualifies for FMLA leave. However, employers may use a DOL "optional use" form or their own similar document.

The DOL recently updated its notice and medical certification forms, which can be completed and saved electronically. The department created five DOL optional-use FMLA certification forms (<https://www.dol.gov/agencies/whd/fmla/forms>), including one to complete when employees request leave for their own medical condition (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-E.pdf>) and another to use when employees request leave due to a family member's medical condition (<https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/WH-380-F.pdf>).

"Alternatively," the DOL explained, "employers may use their own forms, if they provide the same basic notice information and require only the same basic certification information."

Sarah Platt, an attorney with Ogletree Deakins in Milwaukee, said employers should become familiar with the new forms and understand how each question on the form aligns to an element of determining FMLA eligibility.

"The language on the new forms more clearly explains to health care providers the type of information needed relating to the frequency and duration of the need for leave," she said.

The new form also asks for more specific information about the essential functions that the employee is unable to perform. "This may allow employers to more easily explore reasonable accommodations that might allow the employee to work rather than needing leave," Platt noted.

Employers should understand that different rules apply to leave requests under the Families First Coronavirus Response Act (<http://www.dol.gov/agencies/whd/pandemic/ffcra-questions>) (FFCRA). Employees may be entitled to receive up to 80 hours of paid sick leave for certain coronavirus-related reasons under FFCRA and an additional 10 weeks of partially paid leave if they are unable to work because their child's school or child care provider is closed or unavailable due to the pandemic.

### Providing Feedback on Improvements

"Information from the public on what is and is not working well in the administration of the FMLA can further inform and guide the department in issuing modernized tools to aid in understanding and applying the FMLA," the DOL said in its request for information (<https://s3.amazonaws.com/public-inspection.federalregister.gov/2020-14873.pdf>). Specifically, the department is seeking feedback on what employers and employees would like to see changed in the FMLA regulations to better effectuate their rights and obligations under the law. In addition to other questions, the DOL asked:

- What challenges have employers and employees experienced in applying the regulatory definition of a serious health condition?
- What difficulties have employers experienced in determining when an employee has a chronic condition that qualifies as a serious health condition under the regulations?
- What challenges have employers and employees experienced with the medical certification process that haven't already been addressed?

"The biggest challenges that I see companies having with managing FMLA—and therefore areas for comment—are concerns over abuse of intermittent leave ([www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/how-to-stop-fmla-abuse.aspx](http://www.shrm.org/resourcesandtools/legal-and-compliance/employment-law/pages/how-to-stop-fmla-abuse.aspx))," Platt said. "While the majority of employees use intermittent leave appropriately for legitimate medical leave, the few that abuse the benefit take up a lot of employer time and attention."

She noted that it would also be helpful to get clarity about whether an employer can require an employee to take extra procedural steps to report an absence covered by the FMLA, such as reporting the absence to a supervisor, who can arrange coverage, and also to a third-party administrator that can track the FMLA leave. She noted that a few district court cases called this practice into question.

Interested members of the public will have 60 days to submit comments and may do so by visiting [www.regulations.gov](http://www.regulations.gov) (<http://www.regulations.gov>).

### Paid Family and Medical Leave

The DOL also announced a request for information ([<https://www.shrm.org/ResourcesAndTools/legal-and-compliance/employment-law/Pages/DOL-Updates-FMLA-Forms-and-Seeks-Input-on-Making-Impr...> 2/3](https://urldefense.proofpoint.com/v2/url?u=https-3A__Inks.gd_l_eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkjloxMDYsInVyaSI6ImJwMjpbGijaylslmJ1bGxldGluX2lkjoiMjAyMDA3MTY1uMjQ0OTU0ODEILCJ1cmwiOiJodHRwczovL3d3dy5mZWRIcmFscmVnaXN0ZXluZ292L2RvY3VtZW50cy8yMDIwLzA3LzE2LzlwMjAtMTQ4NzQvcmlwVWVzdC1mb3ItaW5mb3JtYXRpb24tcGFpZC1sZWZ2ZS5J9.y8ea7Y6Hx16DgC-2DCUilggUV2EFd8nhlQoJTgn3Sc8Ho_s_60282646_br_81154924327-2DI&d=DwMFAA&c=nQOnw6HHAeKBNxj23OXhOw&r=i8hrXaCtq0NkHyqxnGg12NWr9OdBLdbaR7syXgv_DkE&m=3R6YRC_qhq0x0RKBqxUJARMC8XJDQrgyDDR186dJDPw&s=B6ROGwJ_ernqsLvrG9GhEdWIMzBWEyf2bDfGdJGTjW0&e=) on how paid family and medical leave may affect the workforce. The request was published in the <i>Federal Register</i> on July 16 and will also be open for public comment for 60 days.</p>
</div>
<div data-bbox=)

The DOL's Women's Bureau wants to know about the effectiveness of current paid-leave programs that are provided through state agencies and employers, as well as the impact that access (or the lack of access) to such programs may have on women and their families.

"Expanding workplace flexibility has long been a priority of the Women's Bureau," said Dr. Laurie Todd-Smith, the bureau's director. "Paid leave may also be valuable in enhancing the upward mobility of women workers and the well-being of American families."

Emily M. Dickens, the Society for Human Resource Management's (SHRM's) corporate secretary, chief of staff and head of Government Affairs said, "SHRM looks forward to responding to the agency's effort to gather feedback from key workplace stakeholders. As business leaders directly responsible for implementing paid-leave programs, our 300,000-plus members are uniquely positioned to provide critical feedback on employer and state paid-leave initiatives."

## HR DAILY NEWSLETTER

News, trends and analysis, as well as breaking news alerts, to help HR professionals do their jobs better each business day.

Email Address

**CONTACT US ([WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX](http://WWW.SHRM.ORG/ABOUT-SHRM/PAGES/CONTACT-US.ASPX)) | 800.283.SHRM  
(7476)**

© 2020 SHRM. All Rights Reserved

SHRM provides content as a service to its readers and members. It does not offer legal advice, and cannot guarantee the accuracy or suitability of its content for a particular purpose.

Disclaimer ([www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer](http://www.shrm.org/about-shrm/Pages/Terms-of-Use.aspx#Disclaimer))