

PUBLICATION

DOL Publishes New FMLA Forms, Sort Of

March 22, 2012

The U.S. Department of Labor (DOL) has published "updated" Family and Medical Leave Act (FMLA) notification and certification forms effective through February 2015. These forms replace the FMLA forms that had expired at the end of 2011. Employers may use either the forms prepared by the DOL or their own forms, as long as the forms used contain all information required by the FMLA.

No substantive changes have been made to these forms except the effective date. Specifically, these forms do not incorporate changes brought about by the 2010 amendments pertaining to military family leave (e.g., changes in exigent leave, the inquiry of a service member's past military service given the expanded definition of a "covered service member," etc.). The forms also do not reflect any of the requirements imposed on employers by the Genetic Information and Nondiscrimination Act (GINA). Although GINA prohibits employers with 15 or more employees from requesting or requiring "genetic information" from any applicant or employee, GINA provides a "safe harbor" for employers who lawfully request medical information (for example, for FMLA purposes) if the employer informs the employee at the time the information is sought that it is not seeking genetic information about the employee or his or her family member.

For these reasons, we anticipate that the DOL will publish new forms once the agency finalizes its proposed regulations, published on February 15, 2012. The DOL has invited the public to submit written comments on the Proposed Regulations through April 16, 2012. These proposed regulations would, among other things:

- Expand the military family leave provisions of the FMLA (pursuant to the National Defense Authorization Act of 2010);
- Incorporate a special eligibility provision for airline flight crew employees (pursuant to the Airline Flight Crew Technical Corrections Act);
- Change certain instructions with respect to the calculation of leaves; and
- Make certain changes to the text and order of the existing FMLA regulations, which took effect in 2009, such as removing the actual forms from the text of the final regulations (so that they are available only online).

In the meantime, we encourage clients to use the most recent published version of the FMLA model forms and include appropriate GINA language to take advantage of that law's safe harbor provisions. For more information about these developments, or to discuss how the FMLA affects your workplace, please feel free to reach out to any of our nearly 60 attorneys dedicated specifically to Labor & Employment issues, located in Birmingham, Alabama; Atlanta, Georgia; Baton Rouge, Mandeville and New Orleans, Louisiana; Jackson, Mississippi; Chattanooga, Johnson City, Knoxville, Memphis and Nashville, Tennessee; and Houston, Texas.