

PUBLICATION

FMLA Update: DOL Attempts to Simplify Required Leave Forms and Expands Interpretation of Covered Leave to Include IEP Meetings

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The U.S. Department of Labor (DOL) is attempting to simplify the approval process for employee medical leave pursuant to the Family and Medical Leave Act (FMLA) by making revisions to its seven FMLA leave forms. These forms include those commonly used by employers such as, for example, the Certification of Health Care Provider for Employee's Serious Health Condition, the Notice of Eligibility of Rights & Responsibilities, and the Designation Notice. While these forms are not required to be used, employers commonly use them, as they are published by the DOL's Wage and Hour Division, the agency charged with enforcement of the FMLA.

On August 5, 2019, the DOL announced its proposed changes to the FMLA leave forms. The DOL's stated goal with these revisions is "to increase compliance with the FMLA, improve customer service, and reduce the burden on the public by making the forms easier to understand and use." In short, this is the DOL's attempt at simplifying its forms.

The proposed changes include fewer questions that call for a narrative response and instead call for checking a box. There are spaces for further clarification regarding medical information, a change that is aimed at reducing the demand for follow-up information from health care providers. The DOL states that the medical certification forms have also been reorganized in an effort to help more quickly determine whether a condition qualifies as a "serious health condition," for which FMLA leave must be provided. The changes also include more information to better communicate the conditions and terms of FMLA leave to employees, as well as layout and stylistic changes to improve readability.

Critics argue the forms could be further simplified and that the proposed changes will do little to increase understandability and compliance with the requirements of the FMLA. Other critics, however, point to the fact that the revised forms oversimplify complex medical questions and will thus still require follow-up by employers to health care providers. The proposed forms can be found on the DOL's website, and there is a 60-day public comment period to the proposed revisions before the finalized forms are published.

While the DOL is making efforts to simplify the leave approval process for employers, employees, and health care providers, it also broadened the interpretation of the type of leave that qualifies under the FMLA. In an Opinion Letter issued on August 8, 2019, the DOL's Wage and Hour Division stated that an employee is permitted to use FMLA leave to attend a Committee on Special Education (CSE) meeting to discuss the Individualized Education Program (IEP) of an employee's son or daughter. The DOL noted that the FMLA is only applicable to leave for a "serious health condition." The employee about whom this inquiry was made had two children with qualifying "serious health conditions." As a result of these conditions, the children were required to receive pediatrician-prescribed occupational, speech, and physical therapy provided by their school district. Additionally, four times a year their school held CSE/IEP meetings to review the children's educational and medical needs, well-being, and progress. In attendance at these meetings are the children's speech pathologist, school psychologist, occupational therapist and/or physical therapist employed or contracted by the school district.

As reiterated in the Opinion Letter, the FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. An eligible employee of a covered employer may take up to 12 weeks of job-protected, unpaid FMLA leave per year to care for the family member if the family member has a serious health condition. Care for a family member includes "both physical and psychological care" and "mak[ing] arrangements for changes in care" 29 C.F.R. § 825.124(a)-(b).

The DOL confirmed that leave to attend a CSE/IEP meeting for a child with a serious health condition is a qualifying reason for taking FMLA leave because the meeting constitutes "care for a family member . . . with a serious health condition." It was shown that attendance at these meetings helps the parent make medical decisions concerning the child and to ensure the child's school environment is suitable to their medical, social, and academic needs. The Opinion Letter cites the FMLA regulations, which define "to care for" to include "to make arrangements for changes in care," and the DOL reasoned that these meetings are critical for decisions as to the children's care plan and any required changes to the care plan.

While Opinion Letters are limited to the facts presented, this guidance arguably expands what was previously thought to be permissible uses of FMLA leave. The Opinion Letter, FMLA2019-2-A, can be found on the Department of Labor's [website](#). For questions about FMLA compliance, please contact the [Labor and Employment](#) Team at Baker Donelson.