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New FMLA Model Forms

The U.S. Department of Labor (DOL) continues to examine strategies to improve the use and administration of leave pursuant to the Family and Medical Leave Act (FMLA). As part of this initiative, the DOL recently released updated model FMLA forms for employer use.

The new forms (<https://www.dol.gov/agencies/whd/fmla/forms>), which do not substantively change employee rights, take effect immediately and seek to streamline the FMLA certification process. Key changes include reorganization of the medical certification, replacement of certain open-ended questions with checkboxes, additional guidance on the substitution of paid leave and concurrent leave, and new details regarding circumstances allowing for follow-up inquiries to healthcare providers. The new forms also include electronic fillable features. The DOL did not change its model workplace notice poster.

Notably, the new forms do not address the newly expanded FMLA leave under the Families First Coronavirus Response Act (FFCRA), which provides for paid FMLA to care for a child whose school or child care provider is closed or unavailable for reasons related to COVID-19. Instead, the Q&A accompanying the new FMLA forms (<https://www.dol.gov/agencies/whd/fmla/forms>) refers employers to a separate FFCRA Q&A (<https://www.dol.gov/agencies/whd/pandemic/ffcra-questions#15>) regarding FFCRA leave certification.

Employers may use the DOL model forms or create their own version containing the same basic information, provided the medical certification does not go beyond the scope of permissible inquiries under the FMLA. Employers also may continue to use the prior version of the model forms, although upgrading to the new forms is recommended as feasible. Employers may not require employees to re-certify for FMLA due to the new model forms, but the new forms may be used during the next regular recertification process (<https://webapps.dol.gov/elaws/whd/fmla/12a5.aspx>).

The DOL intends the new model forms to be the first step toward refinement of the DOL's guidance on use and administration of FMLA leave. The DOL requests public feedback (<https://www.dol.gov/newsroom/releases/whd/whd20200716-0>) to assist in identifying additional areas for improvement, with a deadline of September 15, 2020 to submit written comments.



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