

**Date:** January 7, 2009

**Re:** Changes to The Family and Medical Leave Act

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What The Changes Are:

The Department of Labor's proposed changes to the FMLA become effective on January 16, 2009. While there are many changes, the most significant are as follows:

- If the employer violates FMLA notice provisions, the employee may receive more than 12 weeks leave if the employee is actually harmed.
- “Light-duty” work performed by an employee eligible for FMLA leave does not count against employee's FMLA leave allowance.
- “Serious health condition” has been re-defined to include visiting a health care provider twice in 30-day period for the condition.
- The employer now has 5 days (up from 2) to send out appropriate notices, including a notice that the employer has designated the leave as FMLA leave.
- The employer is required to return deficient medical certifications to employees requesting the leave, and give them 7 days to cure the deficiencies.
- The employer may contact the healthcare provider to clarify and/or verify information on certification. Note: the employee's direct supervisor is not allowed to contact health care provider.
- The employer can ask for fitness for duty certificate for an employee who has taken intermittent leave when reasonable safety concerns exist.

How It Affects Your Business:

Employers must ensure that their FMLA procedures comply with the new regulations. Failing to satisfy the requirements of the new regulations/changes will expose employers to the risk of litigation. Employers should update their policies and procedures, and train employees to comply with the new regulations.



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### A New Poster & New Forms are Available for Downloading:

A revised [Family and Medical Leave Act \(FMLA\) poster](#), reflecting the recently published final rule, is now available for viewing and downloading from the DOL website ([www.dol.gov](http://www.dol.gov)). Every employer covered by the FMLA is required to post and keep posted on its premises, in conspicuous places where employees are employed, a notice explaining the Act's provisions.

The Department has provided optional forms for use by employers and employees during the FMLA process:

- The Department has revised its Certification of Health Care Provider form (WH-380), and divided it into two separate forms for an [Employee's Serious Health Condition \(WH-380E\)](#) and a [Family Member's Serious Health Condition \(WH-380F\)](#).
- The Department has also revised its [Notice of Eligibility and Rights and Responsibilities form \(WH-381\)](#).
- The Department has added new forms for [Designation Notice to Employee of FMLA Leave \(WH-382\)](#), [Certification of Qualifying Exigency for Military Family Leave \(WH-384\)](#), and [Certification for Serious Injury or Illness of Covered Service member for Military Family Leave \(WH-385\)](#)

The poster and forms become effective on January 16, 2009. Additional compliance assistance materials are also available on FMLA Final Rule Web site at [www.dol.gov/esa/whd/fmla/finalrule.htm](http://www.dol.gov/esa/whd/fmla/finalrule.htm).

**The information contained in this Bulletin is not, nor is it intended to be, legal advice. You should consult an attorney for individual advice regarding your own situation.**