Department of Labor Revises FMLA Forms

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Without any fanfare, the Department of Labor published new FMLA forms. They are effective through May 31, 2018. See links below. Interestingly, the DOL did not revise the FMLA poster and still did not create a "Fitness-For-Duty" certification form. At first glance, it appears the only material revision to some of the forms is a cryptic reference to the Genetic Information Nondiscrimination Act ("GINA"). The EEOC enforces GINA – which prohibits employers from discriminating against employees or applicants because of genetic information.

Tucked away in the FMLA health care provider revised instructions is the following sentence: "Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b)."

This belated GINA insertion is not surprising. Since 2008, employers have been counseled to include GINA disclaimers in any written inquiry requesting medical information about an individual (e.g., FMLA, ADA, workers' compensation, drug test consent forms). What is surprising is the DOL's failure to use the GINA disclaimer specifically sanctioned by its government counterpart – the EEOC. See 29 C.F.R. § 1635.8(B). As set forth in that regulation, if the disclaimer language is utilized, then any receipt of genetic information in response to a medical information request will be deemed inadvertent and not a GINA violation. In an abundance of caution, we recommend employers still attach the EEOC's detailed GINA disclaimer to any medical inquiry form, including the revised FMLA forms.

For more information about FMLA compliance, please contact any attorney in the Frost Brown Todd Labor and Employment practice group.

To download the latest FMLA forms, visit the Department of Labor's wage and Hour Division's webpage Forms: Final Rule to Implement

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