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DOL Updates FMLA Forms

The Department of Labor ("DOL") published revised "optional-use" FMLA forms. It maintains the revised forms are simpler and easier for employers, employees, and healthcare providers to use. For example, the revised forms include more questions that users can answer, in some instances, by checking a response box.

The seven forms are listed and linked below.

- [Form WH-381](#) – Notice of Eligibility & Rights and Responsibilities
- [Form WH-382](#) – Designation Notice
- [Form WH-380-E](#) – Employee's Serious Health Condition Certification
- [Form WH-380-F](#) – Family Member's Serious Health Condition Certification
- [Form WH-384](#) – Qualifying Exigency Certification
- [Form WH-385](#) – Military Caregiver of Current Service Member Certification
- [Form WH-385V](#) – Military Caregiver Leave of Veteran Certification

The DOL did not revise the FMLA poster. Interestingly, the DOL still has not issued a generic "Fitness-for-Duty" certification.

The DOL also provided the following guidance about the new FMLA forms.

- Users still can use the "old" DOL forms – if they so choose. We recommend using the new forms.
- If an employee already completed the old certification form, the employer cannot require him/her to provide that same information on the new form.
- An employer may use the DOL's prototype forms or create their own version of the forms containing the same basic information. Cautionary note. If you create your own forms, no information may be required beyond that specified in the

FMLA regulations. In other words, you cannot create a dual-purpose form that combines FMLA and ADA (reasonable accommodation) inquiries.

- Employers must accept a complete and sufficient certification, regardless of the format. The employer cannot refuse:
 - a fax or copy of the certification;
 - a certification not completed on the employer's standard company form; or
 - any other record of the medical documentation (e.g., communication on the healthcare provider's letterhead).
- The expiration date on the DOL forms is related to the collection of information as required by the Office of Management and Budget. It is not relevant to the content of the required information.
- The DOL emphasized the new FMLA forms have no applicability to the Families First Coronavirus Response Act ("FFCRA"). The FFCRA has different documentation requirements.

After hearing numerous (and well-deserved) employer criticisms about the old forms over the years, the new FMLA forms appear to be a welcome (but not perfect) improvement.

For more information about these new forms or the FMLA, please contact [Jeff Shoskin](#), [Katie Collier](#), or any other attorney in Frost Brown Todd's [Labor and Employment](#) group.

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