

DOL Issues Updated FMLA Certification Forms

1 min read

Jun 22, 2015

The U.S. Department of Labor recently issued updated health care provider certification forms for employers to provide employees who request leave pursuant to the Family and Medical Leave Act.

The new forms include:

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition;
- WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition;
- WH-381 Notice of Eligibility and Rights & Responsibilities;
- WH-382 Designation Notice;
- WH-384 Certification of Qualifying Exigency for Military Family Leave;
- WH-385 Certification for Serious Injury or Illness of Current Servicemember – for Military Family Leave; and
- WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave.

The most notable update is a reference to the Genetic Information Nondiscrimination Act of 2008 ("GINA"), a federal law prohibiting employers from discriminating because of employees' or applicants' genetic information. This reference, found in the form's opening instructions, warns health care providers not to 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)." Essentially acting as a safe harbor, this instruction protects employers from a GINA violation if they inadvertently receive genetic information from a health care provider in response to a lawful request for information under the FMLA. The DOL also revised the certification forms to instruct employers that "genetic information" received in response to the certification must be kept confidential, in accordance with GINA's requirements.

Employers should begin using these forms, which are set to expire in May of 2018, immediately. Copies of the updated forms can be found on the DOL's webpage. With questions, please contact your Hinshaw employment attorney.

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