

# U.S. Department of Labor Releases New FMLA Forms and Requests Public Input on Existing Regulations

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The U.S. Department of Labor (“DOL”) has released new and significantly revised versions of its model notice of rights, certification, and designation forms under the federal Family and Medical Leave Act (“FMLA”). According to a [press release](#) by the DOL, the new forms, which are now currently in effect and can be found on the [DOL’s website](#), seek to “streamline” the prior forms by making them “simpler and easier for employees, employers, leave administrators and healthcare providers to understand and use.”

As discussed in a [prior blog](#) when changes to the forms were first being proposed, the revisions do not alter the substance of leave benefits and protections available to covered employees under the FMLA. However, the updated forms do include more questions which can be answered by checking response boxes (as opposed to requiring written responses), as well as add additional information on the substitution of paid leave and concurrent leave usage during FMLA on the Notice of Eligibility and Rights & Responsibilities form. The revised certification forms also contain additional information regarding the circumstances in which follow up information may be obtained from healthcare providers, and are reorganized with the goal of more efficiently determining whether a condition qualifies as a serious health condition. And in a nod to safety concerns regarding the COVID-19 pandemic, the forms now include electronic signature features to allow for contactless completion and transmission of completed forms. It is noted that the [FMLA notice](#) that covered employers are required to post in the workplace has not been revised at this time.

Employers should keep in mind that use of the DOL’s model forms is optional.

Furthermore, because the FMLA does require any specific form be used, employers cannot require employees provide them with a new certification using the updated forms if they have already provided the required FMLA information on the prior versions of the forms (or in any other form the employer utilizes), unless recertification is otherwise permitted under the FMLA regulations.

In addition, the DOL has published a [Request for Information](#) seeking input from the public regarding the regulations implementing the FMLA. The DOL is seeking information concerning the current regulations' effectiveness in order to aid its administration of the FMLA, and specifically seeks feedback on what employers and employees would like to see changed in the FMLA regulations to better effectuate the rights and obligations under the FMLA.

Members of the public are encouraged to frame their comments around several suggested questions, though the DOL notes in the RFI that "[t]hese questions are not intended to be an exclusive list of issues for which the Departments seeks information." The questions address a variety of topics, including challenges experienced by employers and employees:

1. in applying the definition of a "serious health condition" under the law and, specifically, difficulties employers have experienced in determining when an employee has a chronic condition that qualifies as a serious health condition under the existing regulations;
2. when an employee takes FMLA leave on an intermittent basis or on a reduced leave schedule, particularly when the timing or need for intermittent leave is unforeseeable;
3. when employees request leave or notify their employers of their need for leave, including conveying sufficient information to notify employers that the employee may have an FMLA-qualifying reason for leave;
4. in determining whether a certification establishes that the employee or employee's immediate family member has a serious health condition under the FMLA and the amount of leave needed that are not otherwise addressed by the revisions to the model certifications forms (as discussed above); and
5. regarding any other aspect of administering FMLA leave or employees' taking or attempting to take FMLA leave.

In addition, the DOL seeks input on whether additional guidance regarding the interpretations contained in any of the seven opinion letters the agency has issued on FMLA-related topics since 2018, including on FMLA coverage for organ donation, the compensability of frequent 15-minute rest breaks under the Fair Labor Standards Act when the breaks are necessary due to a serious health condition under the FMLA, and the requirements around the timing for designating FMLA-qualifying leave.

Public comments will be accepted until September 15, 2020 and may be submitted electronically, through the Federal eRulemaking Portal at <http://www.regulations.gov>, or by mail.

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We will continue to closely monitor developments on this topic. In the meantime, employers utilizing the DOL's model notice of rights, certification, and designation forms should begin utilizing the updated versions of the forms right away, and should continue to check the DOL's [forms website](#) for any additional updates to the forms that may be implemented in the future.

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