

Updated FMLA Regulations Take Effect on January 16, 2009

Enacted in 1993, the Family and Medical Leave Act (FMLA) is a federal law that requires employers to provide job-protected leave to employees for family and temporary medical reasons. On Nov. 18, 2008, the U.S. Department of Labor issued a final rule to update the FMLA regulations. The new regulations make several significant modifications to the obligations of employers and employees with respect to the FMLA.

Several of the significant changes include:

- Employer representatives may contact an employee's health care provider to clarify a medical certification. Those employer representatives who may contact the employee's physician include a human resources professional, leave administrator, or management official, or a health care provider selected by the employer. The employee's direct supervisor is specifically prohibited from contacting the employee's health care provider regarding the employee's or family member's health condition.
- If an employer deems a medical certification to be incomplete or insufficient, the employer must specify in writing what information is lacking and provide the employee with seven calendar days to cure the deficiency. The new regulations also update the medical certifications forms and include separate forms for employees and covered family members.
- Employees are required to follow the employer's usual and customary call-in policies for reporting absences, absent unusual circumstances. Previously, an employee could provide notice of the need for FMLA leave up to two full business days after an absence.
- Employees must certify that they have visited a doctor at least twice in one year in order to qualify for leave due to a "chronic condition."
- Employers may require fitness-for-duty tests for employees returning from intermittent FMLA leave if performing the job raises a significant risk of harm to the employee or others.
- The new regulations clarify employer notice requirements. Employers will be required to provide employees with:

- (1) A general notice about the FMLA (through a poster or employee handbook upon hire)
 - (2) An eligibility notice
 - (3) A rights and responsibilities notice
 - (4) A designation notice
- The time for employers to provide various notices is also extended from two days to five.
 - Time spent performing “light duty” work does not count against an employee’s FMLA leave entitlement.
 - Employers may deny a “perfect attendance” award to an employee who does not have perfect attendance due to FMLA leave, so long as the employer treats employees taking non-FMLA leave in an identical manner.
 - With regard to military family leave authorized earlier this year, the new regulations define a “qualifying exigency” to include:
 - (1) Short-notice deployment
 - (2) Military events and related activities
 - (3) Childcare and school activities
 - (4) Financial and legal arrangements
 - (5) Counseling
 - (6) Rest and recuperation
 - (7) Post-deployment activities
 - (8) Additional activities not encompassed in the other categories but agreed to by the employer and employee

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