

6 good reasons to use new model FMLA forms

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The U.S. Department of Labor (DOL) recently issued [new forms](#) you can use to meet the notice and certification requirements of the Family and Medical Leave Act (FMLA). Here are six good reasons to use the new forms.

1. Easier for employees to understand

The new forms use simple wording. They also have easy-to-use checkboxes to steer both employers and employees through the process of determining eligibility, requesting additional information, providing required notice, and certifying serious health conditions. Simple wording and checkboxes increase the chances the forms are filled out correctly.

2. Employee confidence in FMLA processes bolstered

Because the new forms are “official,” they establish legitimacy with employees. The forms provide information from a neutral governmental source, which should help them appreciate you aren’t just “making things up” but are committed to doing things the right way.

Likewise, in some cases, the new forms make clear to employees that they also have certain obligations. They also clarify to healthcare providers that employers are “within their rights” to require certain information in the certification process.

Here are four examples of how the forms can reduce questions about employer practices required by the FMLA:

- The notice of eligibility points out paid leave runs concurrently with FMLA leave.

- The designation notice indicates employers are responsible for designating leave as qualifying under the FMLA, reflecting the DOL’s 2019 opinion letter that stated employees can’t opt out of the leave: “Once an eligible employee communicates the need to take leave for an FMLA-qualifying reason, neither the employee nor the employer may decline FMLA protection for that leave.”
- The notice of eligibility (WH-381) has a simplified checkbox approach to defining spouse, child, and parent, which should help walk the employee through the complex process of determining eligibility when the terms are defined in different ways, depending on the circumstances of the leave request.
- The new certification forms (see section I of WH-380-E and WH-380-F) say an employee *may not* request a certification for FMLA leave to bond with a healthy newborn child or a child placed for adoption or foster care.

Again, these are the “official” government forms, not merely an employer’s “policy” or an HR manager’s opinion. Therefore, HR personnel are likely to spend less time answering questions and conferring with employees about their eligibility. Bottom line: The new forms take some of the guesswork out of the FMLA process.

3. Safer to use than forms you create yourself

The FMLA regulations are fairly stringent on what information an employer must provide to employees. Because the DOL created the forms, they inform employees about everything they need to know and provide a virtually fail-proof checklist for employers as well.

In short, using the new forms allows you to reduce the risk of leaving out a required piece of information or skipping a step. If you want to continue using custom forms, you should still review the model forms to make sure everything is included.

4. Faster than creating your own

Since the new FMLA forms contain all necessary information, it's faster to adopt them than to create or modify custom forms. Besides, if you really want to provide additional material, you can always attach an addendum to the model form.

5. 'Touchless' way of meeting FMLA requirements in COVID-19 era

The new FMLA forms can be filled in and signed electronically. No in-person meeting or exchange is required!

6. Motivating healthcare providers to be more accurate, complete

The new certification forms include a box in which the healthcare provider can indicate there is no serious health condition. With the previous version of the form, some providers got the impression they had no choice but to confirm the employee or a family member had a serious medical condition even if they believed otherwise. The new forms give them the option to conclude no serious health condition exists.

Language in the new certification forms strongly prompts the healthcare provider to give a best estimate of how long the employee's medical condition will last. The old forms mention a requirement for a best estimate (buried in the middle of a long paragraph) and require the provider to indicate the "probable duration of condition." In contrast, the new forms expect the provider to fill in a blank after this prompt:

Provide your *best estimate* of the duration of the treatment(s), including periods of recovery.
[Emphasis in the original.]

When a healthcare provider doesn't provide the needed information, sending a copy of the model form with the appropriate section highlighted may

be an easy way to politely suggest the need to provide the information—so long as you don't request or require the use of any particular form (model, custom, or something else).

But be careful. Like most areas of employment law, there are some tricky issues to navigate. You must accept *any* valid certification regardless of its format:

- You can't require employees to return to their healthcare provider to get a new certification form completed if they have already provided a completed old certification form.
- You can't reject certification information because the healthcare provider has used a format it likes better.

Final reminders about new forms

You aren't required to use the new FMLA forms. You can continue to use the previous versions (set to expire on August 31, 2021) or your own custom forms. For certifications, accept the required information in any form provided, but remember you can ask for additional details if necessary and appropriate.

You can use your own forms, but be careful. Be sure to include all the information you're required to tell employees. Don't ask them for more information than the regulations allow.

Don't send any completed forms to the DOL. They should be given to employees or kept in your files. (The department won't ask to see the forms unless it begins some type of investigation.)

Finally, the forms don't apply to requests for leave under the Families First Coronavirus Response Act (FFCRA). Under the FFCRA's expansion of the FMLA, an employee may be entitled to 12 weeks of paid leave because the COVID-19 pandemic has closed the school or daycare facility of the employee's child. The documentation requirements for FFCRA leave are different.

How to find new forms

Here are links to seven new FMLA forms:

- [Form WH-381](#): notice of eligibility and rights and responsibilities;
- [Form WH-382](#): designation notice;
- [Form WH-380-E](#): certifications for employee's serious health condition;
- [Form WH-380-F](#): certification for family member's serious health condition;
- [Form WH-384](#): qualifying exigency certification;
- [Form WH-385](#): certification for military caregiver of current servicemember; and
- [Form WH-385-V](#): certification for military caregiver of veteran.

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