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U.S. DEPARTMENT OF LABOR PUBLISHES NEW FMLA EMPLOYER GUIDE AND POSTER

As employers covered by the Family Medical Leave Act (FMLA) can attest, administering the FMLA's regulatory framework at the employee level can consume substantial time and resources. Despite the expense associated with applying the complex and often counterintuitive regulations, the U.S. Department of Labor takes the position that "[t]he FMLA is working."

In support of its position, the Department cites results from its most recent survey that many human resources professionals may find surprising. For example, it reports that the survey shows "85% of employers report that complying with the FMLA is very easy, somewhat easy, or had no noticeable effect." Moreover, "91% of employers report that complying with the FMLA has had either a positive effect or no noticeable effect on employee absenteeism, turnover, and morale." According to the Department, less than 3 percent of employers reported any suspicion of FMLA misuse by employees.

Ostensibly to continue educating employers and employees about the FMLA, the Labor Department has recently announced a new guide and informational poster about the law. This newsletter discusses both.

New FMLA Employer Guide

For some time, the Department has made it a point to inform and educate employees about their rights under the FMLA. In addition to a covered employer's informational obligations, the agency itself has engaged in a direct informational campaign targeted to employees. In 2012, it published a 20-page booklet aimed at employees, titled "Need Time? The Employee's Guide to the Family and Medical Leave Act."

Four years later, the Department has finally published a similar guide for employers. At a conference on the FMLA and Americans With Disabilities Act sponsored by the Disability Management Employer Coalition, the agency announced its new employer reference, titled “The Employer’s Guide to The Family and Medical Leave Act.” The new guide is more substantial than the older one, and is 76 pages long. Although the guide is ostensibly provided as a reference upon which employers can rely, the Labor Department included a disclaimer that it is “intended as general information only and does not carry the force of legal opinion.”

Despite that disclaimer, the guide does contain some useful reference information for employers. For example, it generally addresses the basic life cycle of an FMLA request, including:

- Who is a covered employer;
- When an employee may qualify for FMLA leave;
- The FMLA certification process;
- Managing FMLA leave while the employee is absent;
- Military exigency and caregiver leave; and
- Prohibited employer conduct in connection with FMLA leave.

Additionally, the guide contains useful links to relevant sections in the Code of Federal Regulations. Employers may also find flowcharts, such as “The Employer’s Road Map to the FMLA,” useful. Moreover, the guide includes a comic-strip-style illustration of a request for FMLA, featuring “Brenda” the human resources professional and “Bobby” the employee.

An electronic copy of the Employer’s Guide is available from the Labor Department’s website, by clicking [here](#). While seasoned human resources professionals may already be familiar with much of the content, there are some interesting sections captioned “Did you know?” that highlight lesser-known aspects of the FMLA. All employers who are or may become subject to the FMLA should consider at least a cursory review of the guide. At the very least, this may lead to recognition of potential compliance issues before they occur.

New FMLA Employee Guide

As most covered employers will remember, the Labor Department revised its FMLA poster in February 2013 in connection with prior changes to the law. This poster, titled “Employee Rights and Responsibilities Under the Family and Medical Leave Act,” contains summary information regarding aspects of the FMLA. Federal regulations require that it be posted in each location where a covered employer has employees, even if none of those employees are eligible for FMLA leave. Moreover, the poster must be placed “prominently where it can be seen by employees and applicants for employment.”

In April 2016, the Department released a new FMLA poster, captioned “Employee Rights Under the Family and Medical Leave Act.” In addition to omitting the word “responsibilities” from the caption, the new poster simplifies the content. Notably, the contact information at the bottom of the poster is more prominent, with a barcode for employees to scan with their mobile devices. Where the prior poster noted that the contact information was “for additional information,” the new poster provides that it is “for additional information or to file a complaint.” It is essentially a more “employee-friendly” version of the 2013 poster.

While the Labor Department acknowledges that the 2013 version is still valid to satisfy an employer’s posting requirement, it has removed the poster from its website. Employers, however, can obtain a copy of the 2013 poster from other sources.

What Should Employers Do Now?

Moving forward, employers should review the new employer’s guide and poster, both of which are available on the Labor Department’s website (www.dol.gov/whd). While a general review of FMLA rules is in itself beneficial, the guide also contains information about some lesser-known aspects of the FMLA. As for the new poster, employers are free to replace their current FMLA poster, although they are not required to do so.

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