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ADVISORY

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DOL PUBLISHES NEW FMLA FORMS (SORT OF)

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The model Family and Medical and Leave Act (FMLA) notices and medical certification forms published by the U.S. Department of Labor ("DOL") were set to expire as of August 31, 2018. However, the DOL recently announced that the forms' expiration dates would be extended three years, until August 31, 2021. The forms have not been changed substantively, only the expiration date, located in the upper right hand corner, has been updated. The Paperwork Reduction Act of 1995 requires that these forms be reviewed and approved every three years.

Employers are encouraged to utilize the DOL's FMLA forms in connection with FMLA leaves and those who do should be sure to use the updated forms. The new forms can be accessed and downloaded here:

- Notice of Eligibility and Rights & Responsibilities
- Designation Notice
- Certification of Health Care Provider for Employee's Serious Health Condition
- Certification of Health Care Provider for Family Member's Serious Health Condition
- Certification for Serious Injury or Illness of a Current Service Member—for Military Family Leave
- Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave
- Certification of Qualifying Exigency for Military Family Leave

Employers should keep in mind the events that may trigger a requirement to provide employees with FMLA notices and certification forms. For instance, even in the absence of a direct request for FMLA leave, an employer may have a legal obligation to provide notice of a right to FMLA leave. DOL regulations provide that so long as an employer "acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the employer must notify the employee of the employee's eligibility to take FMLA leave." 29 C.F.R. § 825.300(b)(1).

A recent decision issued by the U.S. District Court for the District of Connecticut illustrates the point. There, the court held that where an employee left work to obtain medical care for an asthma attack that occurred in the office, an employer's obligation to provide notice of FMLA leave to that employee may have been triggered. Another court also recently concluded that when an employee told a supervisor of his PTSD diagnosis at the outset of employment and subsequently attended frequent medical appointments, the employer may have had notice of the employee's need for FMLA leave.

Failure to provide a notice of FMLA rights in the face of a request for FMLA leave or circumstances indicating an employee may be entitled to FMLA leave, as in the cases discussed above, may constitute an unlawful interference with, restraint, or denial of the exercise of an employee's FMLA rights and give rise to a claim for damages.

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