



## Legal Alert: Legislation to Revise FMLA Introduced

5/11/2009

Recently, two bills were introduced in the House of Representatives that would expand the scope of the Family and Medical Leave Act of 1993 (FMLA). On April 29, 2009, Rep. Carol Shea-Porter introduced legislation, H.R. 2161, that would reverse certain regulations issued by the Department of Labor (DOL), which became effective January 16, 2009. Also, on April 28, 2009, Rep. Carolyn Maloney introduced legislation, H.R. 2132, that would amend the FMLA to permit leave to care for a domestic partner as well as other individuals in an employee's extended family. In a press release, Rep. Shea-Porter explained that the purpose of H.R. 2161 is to "restore the Family and Medical Leave Act to its original intent and spirit." Shea-Porter also said that her bill "is needed in order to reverse the most restrictive of these new regulations." According to the press release, the bill would:

- Restore protections that prevent an employer from forcing an employee to use more incremental FMLA leave than is medically necessary;
- Reverse limitations placed on the use of accrued paid leave while on FMLA;
- Restore the prohibition on denying attendance bonuses as a consequence for taking FMLA leave;
- Restore protections that prohibit the waiving of an employee's FMLA rights without review and approval by the DOL or the courts;
- Restore protections that prohibit an employer from approving or denying FMLA leave based on compliance or non-compliance with employer leave request policies;
- Restore employee privacy by reversing regulations that would allow an employer to directly contact an employee's medical provider;
- Restore previous "fitness-for-duty" certification rules for employees who take intermittent leave;
-

Direct the Secretary to revise the Bush regulations to revisit the new, burdensome treatment and recertification timelines imposed by the previous Department of Labor, and

- 

Direct the Secretary to revise the provided medical certification template to include the definition of a "serious health condition."

Maloney's proposed bill, the "Family and Medical Leave Inclusion Act," would amend the FMLA to permit FMLA eligible employees to take leave to care for a domestic partner, child of a domestic partner, same-sex spouse, parent-in-law, adult child, sibling, or grandparent if that person has an FMLA qualifying "serious health condition." Both bills have been referred to the House Administration Committee, the House Education and Labor Committee, and the House Oversight and Government Reform Committee. We will keep you updated on the status of this legislation. If you have any questions regarding this legislation or other labor or employment related issues, please contact the Ford & Harrison attorney with whom you usually work or the author of this Alert, Jessica Walberg, [jwalberg@fordharrison.com](mailto:jwalberg@fordharrison.com) or 407-418-2324.