

Employment Alert: New Department of Labor FMLA Regulations Effective Today

1/16/2009

The Department of Labor's revisions to the Family and Medical Leave Act (FMLA) and its regulations take effect today, January 16, 2009. Accordingly, it is important for employers to review their policies and procedures to ensure that they comply with the revised FMLA and its regulations. Specifically, employers should take the following measures:

- Begin using updated Department of Labor forms, or substantially similar versions, for required notices and certifications, including those pertaining to eligibility for FMLA leave, designation notices, and health-care-provider certifications
 - Revise employee handbooks to ensure they comply with the new FMLA regulations, such as those relating to updated notices of FMLA rights, proper references to leave for service members and their families, updated timeframes for eligibility, and designation notices
 - Review bonus programs to determine whether revisions are necessary and/or appropriate to ameliorate the impact of FMLA leave on bonus entitlement and amount
 - Revise draft separation agreements to ensure that such agreements do not contain prospective waivers of FMLA rights
 - Update employment posters notifying employees of FMLA rights
 - Consider running training programs to prepare managers and human-resources professionals on how to respond to employee questions and concerns regarding the revisions to the FMLA
 - Revise the approach to requests for medical recertification, to address specific changes to form, timing, and authorized employer contacts regarding such information
 - Ensure that policies regarding employees returning from FMLA leave on light-duty assignments reflect the revised regulations, which provide that such assignments no longer count against FMLA leave and that the light-duty employee retains the right to job restoration while performing this assignment until the end of the applicable FMLA leave year
- We urge employers to work with counsel to ensure that policies, practices, and forms comply with the FMLA; that training programs are designed to effectuate uniform implementation of FMLA requirements; and that posters, handbooks, and other forms of notification are up to date.

For more information on the substantive changes to the FMLA regulations as a result of the new Department of Labor rule, please see our previous alerts on the topic:

Department of Labor Publishes New Rules on FMLA Leave (Mintz Levin Employment Alert, November 19, 2008)

Department of Labor Amends FMLA and Releases Proposed New FMLA Regulations (Mintz Levin Employment Alert, February 22, 2008)

For assistance in this area, please contact one of the attorneys listed below or any member of your Mintz Levin client service team.

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