

## **DOL Revises Optional-Use FMLA Forms**

In June 2020, the U.S. Department of Labor (DOL) revised the optional-use Family and Medical Leave Act (FMLA) forms available for employers to provide required notice to employees and for employees to provide certification of their need for FMLA leave. According to the DOL, the forms were revised to make them easier to understand for employers, leave administrators, health care providers, and employees seeking leave. The revised forms are electronically fillable PDFs that can be saved electronically. Employers may still use their own forms if they provide the same basic notice information and require only the same basic certification information. The revised notice and certification forms can be found [here](#). Note that these forms are not applicable to leave under the Emergency Family and Medical Leave Expansion Act.

The DOL also [provided](#) the following FAQs on the revised forms:

### **1. The Department revised the optional-use FMLA forms in June 2020. Can I still use the old DOL forms?**

Yes. The FMLA does not require the use of any specific form or format. Although the Department revised the FMLA forms in June 2020 to make them easier to understand for employers, leave administrators, healthcare providers, and employees seeking leave, the revised forms convey and collect the same information, which can be provided in any format.

### **2. Can my employer require me to provide a new certification, using the revised form, when I have already provided the required FMLA information using the old certification form?**

No. You can provide the required information contained on a certification form in any format. If you used the old certification forms to provide your employer with the required FMLA information, you do not have to provide your employer with the same FMLA information using the revised certification forms.

### **3. Can my employer make changes to the FMLA forms?**

Your employer may use the WHD prototype forms or create their own version of the forms containing the same basic information. However, an employer that requests a medical certification may request only information that relates to the serious health condition for which the current need for leave exists, and no information may be required beyond that specified in the FMLA regulations. See [29 CFR 825.306](#), [29 CFR 825.307](#), and [29 CFR 825.308](#).

### **4. Do I have to use my employer's certification forms?**

Employers must accept a complete and sufficient certification, regardless of the format. The employer cannot reject a certification that contains all the information needed to determine if the leave is FMLA-qualifying. The employer cannot refuse:

- A fax or copy of the certification;
- A certification that is not completed on the employer's standard company form; or
- Any other record of the medical documentation, such as a communication on the letterhead of the healthcare provider.

## **5. The expiration date of the DOL forms has passed, are they still effective?**

Yes. The content of the information contained within the optional-use DOL form is still applicable, regardless of the expiration date. The expiration date on the DOL forms is related to the collection of information as required by the Office of Management and Budget (OMB), and not relevant to the content of the required information.

## **6. Where do I send the completed certifications or notices?**

*Do not send any completed certifications or forms to the U.S. Department of Labor, Wage and Hour Division.* The employer should provide the required notices to the employee seeking leave. Completed certification forms should be given to the employee to provide to the employer, as it is the employee's responsibility to provide the employer with the completed certification.

## **7. Do these forms have any applicability to the Families First Coronavirus Response Act (FFCRA)?**

No. The FFCRA has different documentation requirements which can be found at [29 CFR 826.100](#) or [www.dol.gov/agencies/whd/pandemic/ffcra-questions](http://www.dol.gov/agencies/whd/pandemic/ffcra-questions). Please see [question & answer items #15 and #16](#) for more information.

Employers with questions about their use of FMLA forms should consult experienced counsel with any questions.

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