

**THE FAMILY AND MEDICAL LEAVE ACT
ONE YEAR AFTER THE REGULATIONS**

EMPLOYEE'S DUTY TO COOPERATE

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*No statements made in this seminar or in the written materials/power point should be construed as legal advice pertaining to specific factual situations.

Employer Notice Requirements

- Employers have four separate notice obligations
- Failure by an employer to provide the required notices may present an FMLA interference claim



1. General Employer Notice Requirements

- Poster
 - Required of all employers
 - Conspicuous place (where employees and applicants can see)
 - New prototype form available
 - Can be posted electronically



General Employer Notice Requirements (cont.)

- Maximum fine of \$110 for each violation of the posting requirement
- If you have eligible employees, must include notice (same contents as poster) in employee handbook (if exists) or through employer intranet or distribute copy of general notice to each employee upon hiring

2. Eligibility Notice

- DOL approved form available
- Triggered when employee requests FMLA leave (or when employer suspects absence may be for an FMLA reason)
- Notice must be given within five (5) business days of request

Eligibility Notice (cont.)

- If employee not eligible, notice must specify the reason
- If employee requests FMLA leave for a different reason within the applicable 12-month period, new notice is required within five (5) days

3. Rights and Responsibilities Notice

- Provided at same time as Eligibility Notice
- DOL Form also covers contents of this Notice
 - Key employee rights explained
 - Employee's right to benefits and job restoration
 - Health care premium payment responsibilities

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Rights and Responsibilities Notice (cont.)

- Counted against FMLA entitlement and describe applicable period for determining
- Certification requirement (serious health condition/qualifying exigency)
- Paid leave requirements

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4. Designation Notice

- DOL Form available
- Issued within five (5) business days of obtaining sufficient information to determine whether leave qualifies as FMLA leave
- Notice must be in writing

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Designation Notice (cont.)

- Notice must include:
 - Amount of FMLA leave to be counted
 - If fitness-for-duty certification required upon return
 - If paid leave to be substituted
 - Update as necessary every 30 days
 - Reason for denial, if denied.

Employee Notice Requirements

- Foreseeable/Unforeseeable
- Requirements differ

Foreseeable Employee Leave

- 30 days advance notice required or otherwise as soon as practicable (possible and practical given the facts; same day/or next business date)
- Reason for leave, timing and duration

Foreseeable Employee Leave (cont.)

- Employee must respond to employer inquiries requesting more information in order to determine if FMLA qualifying
- Cooperate with employer on scheduling medical treatment
- May delay or deny leave if no notice

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Unforeseeable Employee Leave

- As soon as practical given facts and circumstances
- Comply with existing employer call out procedures
- Notice by “spokesperson” if employee unable to give notice

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Unforeseeable Employee Leave (cont.)

- Provide sufficient information to determine if leave is FMLA-qualifying and likely duration
- Obligated to respond to employer inquiries requesting more information to determine if leave is qualifying
- May delay or deny leave if no notice

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FMLA Medical Certifications

- DOL Health Care Provider Form available
- Employer can require medical certification from employee's health care provider or that of the employee's family member
- Employer must request such certification at time employee gives notice of leave or within five (5) business days thereafter

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FMLA Medical Certifications (cont.)

- Can tell employee if certification not received, leave will be denied
- Employee must provide certification within 15 days
- If certification incomplete or insufficient, employee has seven (7) days to cure
- Employer may contact HCP for clarification if deficiencies not cured

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FMLA Medical Certifications (cont.)

- Second and third opinions are still part of the process if employer questions validity of certification

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Fitness-For-Duty Certifications

- Uniformly-applied policy requiring fitness-for-duty certification
- Address employee's ability to return to work and perform essential job functions (include in Designation Notice)

Fitness-For-Duty Certifications (cont.)

- Employer may contact employee's HCP for clarification/authentication
- Employer can delay return to work until certification complete
- No second opinions permitted

Thank you!
