

U.S. Department of Labor Issues Regulations to the Family Medical Leave Act

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The Family and Medical Leave Act of 1993 (FMLA) requires an employer with 50 or more employees at a given work site to provide up to 12 weeks of unpaid leave in a 12-month period to eligible employees who have worked for the employer for at least 12 months or have been employed for at least 1,250 hours during the 12-month period immediately prior to the leave. Leave is allowed for an employee who needs time off as a result of their serious health condition or that of a parent, spouse or child of the employee when the employee is needed to care for the family member.

The FMLA has been a source of litigation and confusion in the workplace and recently has undergone major changes for the first time in its 15-year history. On Nov. 17, 2008, the Department of Labor (DOL) issued 750 pages of Final Regulations on the FMLA. As such, these extensive changes may cause still more confusion and litigation. The new rules take effect on Jan. 16, 2009 and were a response to complaints by both employers and employees. While employers have argued that workers are abusing FMLA leave, employees argued that they are unfairly being denied FMLA and are often retaliated against for taking leave. Some of the changes include requiring employees with chronic conditions to certify that they visit a doctor at least twice a year for that condition. The new rules also require workers to warn their employers that they are planning to miss work "absent unusual circumstances." To enhance employee privacy, an employee's direct supervisor will no longer be allowed to contact a health care provider for medical certification. Employers will be allowed to require "fitness-for-duty" evaluations to make



sure that workers who took FMLA leave are fit to return to their specific jobs. Significantly, employers will be allowed to consider FMLA absences in determining bonuses and other incentive rewards and employers will be able to disqualify employees from bonuses or other payments based on achievement of a specified job-related performance goal (such as attendance) when the employee has not met the goal due to FMLA leave, so long as this is done in a nondiscriminatory manner. Because of the complex and extensive changes, it is evident that new challenges will arise for employees and employers in interpreting and enforcing these new regulations.

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