



STOKES WAGNER

ATTORNEYS AT LAW

ATLANTA • ITHACA • LOS ANGELES • PITTSBURGH • SAN DIEGO • SAN FRANCISCO

New FMLA Forms from the US Department of Labor

On July 17, 2020, the U.S. Department of Labor released new forms for Family and Medical Leave Act (“FMLA”) leave. Their stated purpose is to make the process easier, ensure the completeness of the necessary information, and allow for electronic signatures to reduce contact. The new forms include the following:

1. **A Notice of Eligibility and Rights and Responsibilities Notice ([Form WH-381](#)):** This is a 4-page form that is essentially interactive, containing portions to be filled in by the employer and others to be filled in by the employee, some of which cannot be filled out until other portions have been completed. It generally informs employees as to the eligibility requirements for FMLA leave, allows them to fill in the information required by the FMLA, and advises the employee of the employer’s obligations under the FMLA.
2. **A Designation Notice ([Form WH-382](#)):** This form is to be sent to the employee by the employer, indicating whether or not the leave has been designated as FMLA leave and, if so, how it will be scheduled. It includes some of the same information that is in the Notice Form. The form includes the sentence, “The FMLA requires that you notify us as soon as practicable if the dates of scheduled leave change, are extended, or were initially unknown.” Employers may want to add specific information about how to make such a notification.
3. **Certifications of Health Care Provider for a Serious Health Condition ([Forms WH-380-E](#) and [380-F](#)):** These forms are to be filled out by all three parties, but their purpose is for the employer to request information to support a request for medical leave. Form 380-E is for the employee’s own health condition; Form 380-F is for the health condition of a family member.
4. **Certifications for Military Family Leave ([Forms WH-384](#), [385](#) and [385-V](#)):** These forms similarly may be used for members of the military, family members of the military, and veterans, for leave due to serious health condition of the veteran or the active service member, or for a family member of a veteran or active servicemember either to provide care for a health condition or to invoke other types of leave specific to active service members.

Questions? Contact Stokes Wagner.

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The forms are optional but include all of the information that is required under the law and may ease the process for all parties.

The DOL is soliciting comments on the regulations governing the FMLA, including specifically regarding difficult issues like intermittent leave and an employee's obligation to provide notice to the employer.

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