

DOL Issues Updated FMLA Notices and Forms Including GINA "Safe Harbor" Language Requirements

The U.S Department of Labor (DOL) recently issued new versions of the agency's template Family and Medical Leave Act (FMLA) notices and certification forms, which have been approved for use for the next three years. The new forms—some of which the DOL has substantively revised—include the following:

- WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition;
- WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition;
- WH-381 Notice of Eligibility and Rights & Responsibilities;
- WH-385 Certification for Serious Injury or Illness of Current Servicemember – for Military Family Leave; and
- WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave.

The forms, which are now approved through May 31, 2018, are available through the DOL's webpage—www.dol.gov.

GINA's Safe Harbor

The most notable changes relate to the DOL's decision to add Genetic Information Nondiscrimination Act (GINA) "safe harbor" language to the medical certification forms (WH-380-E, -380-F, -385 and -385-V). Under GINA's implementing regulations, employers that request medical information from an employee should warn the employee and relevant healthcare provider(s) not to provide "genetic information" in response to the employers' requests. If an employer provides sufficient warning, its receipt of genetic information in response to the request will be deemed inadvertent and, therefore, not a violation of GINA. GINA also excuses as inadvertent the receipt of genetic information in response to medical information requests that are *not likely to result in* the employer obtaining genetic information.

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