

Waterman, Robert - WHD

From: Judy Conti <jconti@nelp.org>
Sent: Thursday, October 03, 2019 9:53 AM
To: WHDPRAComments
Subject: Comments on FMLA Forms, Control Number 1235-0003
Attachments: Comments on FLMA forms.pdf

Good morning – please accept the attached comments from the National Employment Law Project re: Control Number 1235-0003.

Thank you for your attention to this matter.

Sincerely,

Judy Conti



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Christine L. Owens
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October 3, 2019

Division of Regulations, Legislation, and Interpretation
Wage and Hour
U.S. Department of Labor
200 Constitution Avenue NW, Room S-3502
Washington, DC 20210

**Re: Department of Labor, Wage and Hour Division Agency Information
Collection Activities; Comment Request; Information Collections: The
Family and Medical Leave Act of 1993, As Amended, Control Number
1235-0003**

Thank you for providing the opportunity to comment on the proposed changes to the Wage and Hour Division's (WHD's) optional-use Family and Medical Leave Act (FMLA) forms. The National Employment Law Project appreciates WHD's effort to provide clearer forms to help employees and employers navigate the FMLA process, and are pleased to offer suggestions for further changes that would make the forms even easier to understand and fill out.

NELP is a non-profit research and policy organization with 50 years of experience advocating for the employment and labor rights of low-wage workers. NELP seeks to ensure that all employees, and especially the most vulnerable ones, receive the basic workplace protections guaranteed in our nation's labor and employment laws, including the Family & Medical Leave Act (FMLA). NELP and our constituents have a direct and sustained interest in a fully-enforced FMLA.

The forms currently under revision are 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 Rights & Responsibilities), WH-382 (Designation Notice), WH-384 (Certification of Qualifying Exigency for Military Family Leave), WH-385 (Certification for Serious Injury or Illness of Covered Servicemember – for Military Family Leave) and WH-385-V (Certification for Serious Illness or Injury of a Veteran for Military Caregiver Leave). The certification forms (WH-380-E, WH-380-F, WH-384, WH-385 and WH-385-V) are designed to convey the information employees need to certify their claim for leave, including medical information from health care providers where necessary. The eligibility and designation notice forms (WH-381 and WH-382) allow employers to inform employees whether or not their leave qualifies as FMLA leave, any additional information the employee must provide, and the rights and responsibilities of employees and employers under the law. Together, these forms serve as important means of communicating FMLA rights and responsibilities to employees, employers and health care providers, and provide a model on which employers can base their own customized forms.

The proposed revisions include several improvements to the design, organization and content of the forms. Overall, the visual organization of the proposed revisions is improved, including larger text, greater spacing between fields, bold text for emphasis and color-coded headings for different sections. This will make it easier to distinguish between fields and understand what information to provide in response.

In addition, the proposed revisions to the instructions are generally more clear, both in the general introductions to the forms as well as within individual sections. In particular, the charts in forms WH-380-E and WH-380-F describing what constitutes a serious health condition should make it easier for health care providers to determine the relevant information. The instructions for providing documentation to establish a family relationship in form WH-381 are also helpful, although **we suggest adding more information as to what a “statement of relationship” entails.** The statement of relationship is an important form of proof for employees who may not readily have access to official documents, including, for example, survivors of domestic violence whose records may not be safe to obtain.

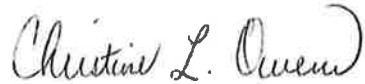
The proposed revisions change certain fields from open-ended text answers to delineated checkboxes, which in many cases should make it easier to provide the most relevant information. For example, the revised WH-380-F, WH-384, WH-385 and WH-385-V use checkboxes rather than text fields to determine the caregiver’s family relationship, and the notice and eligibility forms specifically delineate the relationships and care types that qualify for FMLA leave. However, **WHD should add an “Other” option with a text field to the family relationship checkboxes, which would allow employees with unique individual circumstances (such as *in loco parentis* relationships) to describe their situations.**

For the most part, the proposed revisions make helpful changes to how each form is organized. For example, the reorganized health care provider sections in WH-380-E and WH-380-F appear easier to follow than in the original forms, and the separate call-out relating to reduced work schedule in the certification forms is helpful. However, some of the reorganizations are less useful. For example, several times throughout the proposed revisions, the form provides instructions *after* the fields to which they refer. This could create unnecessary confusion as individuals put information into fields without having read the instructions, causing them to either read the instructions and go back to revise their answers, or to ignore the instructions entirely. **WHD should consider moving the instructions to come before the sections of the forms to which they refer.**

The proposed revisions are generally good at only asking for information that is relevant to the purpose of the form and nothing more, but **there are a few places where WHD should remove requests for unnecessary information.** For example, the certification forms all require information about when the employer became aware of the employee’s need for leave, even though that information is not relevant to the certification process. Indeed, employers already must include such information in the eligibility and designation notice forms, where it is more relevant. Asking employers and health care providers to include irrelevant and sometimes duplicative information adds an extra step for these parties and may make it less likely that they return the forms in a timely fashion, thus creating a barrier to the employee’s ability to take the leave they need. However, the forms should continue to request information about when the employee must return the forms to the employer, as the employee needs this information in order to meet the deadline.

We appreciate the opportunity to submit comments on these proposed revisions. If you have any questions regarding these recommendations, please contact Judy Conti, jconti@nelp.org.

Sincerely,

A handwritten signature in black ink that reads "Christine L. Owens". The signature is written in a cursive, flowing style.

Christine L. Owens
Executive Director