

From: [Jim Freeman](#)
To: [WHDPRAComments](#)
Subject: Comment re Part E of the Proposed New FMLA Form WH-381
Date: Tuesday, August 20, 2019 1:34:50 PM
Attachments: [image001.png](#)

My comments relate to “**Part E: Return-to-Work Requirements**” of proposed form **WH-381** and the use therein of the terms/phrases “**the same pay, benefits, and terms and conditions of Employment**”, “**virtually identical**” and “**in the same manner and at the same level provided when the leave began.**” (Emphasis added) This language arguably precludes changes to a position or to employee benefits during an employee’s FMLA that would occur for legitimate business reasons.

An exception should exist for changes that are unrelated to the employee’s request to use, and their actual use of, FMLA. Examples of such include but are not limited to, changes in a job description; work schedules and shift changes due to changes in production methods or product orders, layoffs, group benefit plan changes, plant closings/relocation, negotiated changes to a collective bargaining agreement, etc. It may not be possible, because of insurance provider requirements, to continue the same group health plan benefits to an employee returning from FMLA leave if, during the employee’s leave, the benefit plan changed. This could occur if the FMLA leave overlaps the end of one benefit year and the beginning of the next benefit year.

Part E: Return-to-Work Requirements

You must be reinstated to the same or an equivalent job with **the same pay, benefits, and terms and conditions of employment** on your return from FMLA-protected leave. An equivalent position is one that is **virtually identical** to your former position in terms of pay, benefits, and working conditions. At the end of your FMLA leave, all benefits must also be resumed **in the same manner and at the same level provided when the leave began**. You do not have return-to-work rights under the FMLA if your need for leave extends beyond the amount of FMLA leave you have available to use.

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