

Waterman, Robert - WHD

From: Suma Setty <setty@nccp.org>
Sent: Friday, October 04, 2019 3:27 PM
To: WHDPRAComments
Subject: Re: Comment Request; Information Collections: The Family and Medical Leave Act of 1993, As Amended, Control Number 1235-0003
Attachments: Comments on Proposed Changes to FMLA optional applications submitted.pdf

Dear Wage and Hour Division,

Please find our organization's comments on the recent revisions to the Family and Medical Leave Act optional forms attached. We appreciate this opportunity to provide feedback on this valued program.

Best,

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Putting research into action to improve lives

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

SUBJECT: 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 Center for Children in Poverty 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.

ABOUT US

The National Center for Children in Poverty (NCCP) is a nonpartisan, public policy research center at the Bank Street Graduate School of Education. NCCP conducts research and translates the findings into actionable recommendations that advocates and policymakers use to improve the lives and futures of low-income children and their families. We delve into issues that contribute to child poverty and make sure our ideas reach those in a position to make meaningful change that reduces the number of families experiencing hardship.

We have long conducted meaningful family and medical leave research, identifying parameters that work well for low-income families with children. Our publications on this topic include the following:

- Eyster, K., Fink S.F., Mason, J., Meyer, L., Reddy, V., Glynn, S.J., Ballantyne, A., Michael, S., Wikstrom, C.W., Koball, H., & Setty, S. (2019). *Meeting the Promise of Paid Leave: Best Practices in State Paid Leave Implementation*. Available at <http://www.nationalpartnership.org/our-work/economic-justice/meeting-the-promise-of-paid-leave.html>.
- Setty, S., Koball, H., Hartig, S., Sutcliffe, T.J. 2019. *Disability Perspectives on Paid Leave: A Qualitative Analysis of Leave-taking among Workers Affected by Disabilities or Serious Health Conditions*. Available at http://www.nccp.org/publications/pdf/text_1217.pdf.

- Setty, S., Skinner, C., Wilson-Simmons, R. 2018. Bonding time: Low-income mothers and New Jersey's Family Leave Insurance program. *Community, Work & Family*, DOI: 10.1080/13668803.2018.1501551
- Wilson-Simmons, R., Setty, S., Thomas Smith, T. 2018. *Supporting America's Low-Income Working Families through Universal Paid Family Leave*, chapter in "Our Kids, Our Future: Solutions to Child Poverty in the U.S." Available at <https://pdfs.semanticscholar.org/cfc4/b85d610cf664448fa082c60799e1c5a5d283.pdf>.
- Setty, S., Skinner, C., & Wilson-Simmons, R. (2016). Protecting Workers, Nurturing Families: Building an Inclusive Family Leave Insurance Program. Available at http://nccp.org/projects/paid_leave_publications.html.

Strengths of revisions

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.

The proposed revisions change certain fields from open-ended text answers to delineated checkboxes, which, again, 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.

While we present a number of suggestions to improve the forms' clarity and thereby, making FMLA accessible to more people who need it, in all, the revisions are positive. We believe the revisions present a better, clear option for families dealing with a loved one's illness/health condition or welcoming a new child into their lives and reduces employer and health care provider burden.

Suggested changes:

1. Clarify the statement of relationship

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. This is critical as we have heard from low-income workers who have been discouraged by descriptions of covered family relationships under FMLA and did not apply at all, so more clarity is necessary in order to be more inclusive of non-traditional family types and relationships.

2. Include an example of an intellectual and developmental disability

The proposed revisions changed from open-ended text answers to checkboxes, which is easier for the user. However, after hearing from over 90 workers from the disability community, **we strongly suggest adding an example of an intellectual and developmental disability (IDD), a permanent and long-term condition, in section II, item (7) of form WH-380-E and section II item 9 on form WH380-F: “Permanent or Long Term Conditions” after “terminal stages of cancer.”** Many caregivers and individuals with IDD did not know they could apply for FMLA for reasons related to a disability.

3. Provide a definition of *in loco parentis* wherever the term occurs

The revised form WH-380-F is also greatly improved by clarifying that the checkboxes documenting caregiver relationships cover *in loco parentis* relationships, and by providing a definition of *in loco parentis* immediately below these fields. However, WHD does not include that clarification in similar checkboxes within Section I of the revised form WH-381, and provides the definition of *in loco parentis* only in Section II (“Additional Information Needed”) of that revised form. To avoid confusion on the part of both employers and employees, **WHD should replicate the text and placement of the *in loco parentis* definition describing eligible relationships in revised form WH-380-F to the checkboxes describing eligible relationships in revised form WH-381. To make the forms even easier to read, it would also help if parenthetical text such as “(see definition below)” is added following the text “including *in loco parentis*” in these checkboxes, in order to make sure that readers understand the definition of that term is provided in the parenthetical note immediately below the checkboxes.** Another approach to reducing confusion about eligible relationships would be to add an “Other” option with a text field in these same checkboxes.

4. Provide instructions prior to form fields

For the most part, the proposed revisions also 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.**

5. Remove requests for unnecessary information

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 **Suma Setty, Senior Research Associate at setty@nccp.org.**