

## Waterman, Robert - WHD

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**From:** Zuniga, Patricia Lauren <PatriciaLauren.Zuniga@lfg.com>  
**Sent:** Thursday, October 03, 2019 11:53 AM  
**To:** WHDPRAComments  
**Subject:** Family and Medical Leave Act (FMLA) Proposed Forms Revision (Control Number 1235-0003)  
**Attachments:** DOL FMLA Forms - LFG Comment Letter 10.3.pdf

On behalf of Lincoln Financial Group, please find attached our comments on the proposed revisions to the optional-use Family and Medical Leave Act (FMLA) forms.

Best regards,



**Patricia Lauren D. Zúñiga, JD\*,** (402) 361-7731 Office  
**LLM, CLMS**  
*Compliance Consultant*  
Group Protection – Legal &  
Regulatory Compliance  
\*Not acting as an attorney

[LincolnFinancial.com](http://LincolnFinancial.com)



**Lincoln Financial Group**  
8801 Indian Hills Drive  
Omaha, NE 68114

Upcoming PTO: October 14-28

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October 3, 2019

Wage and Hour Division  
U.S. Department of Labor  
Through: WHDPRAComments@dol.gov

**RE: Family and Medical Leave Act (FMLA) Proposed Forms Revision  
Control Number 1235-0003**

Greetings:

We are writing to provide recommendations on the U.S. Department of Labor's Wage and Hour Division (WHD) proposed revisions to the optional-use Family and Medical Leave Act (FMLA) forms.

Lincoln Financial Group (Lincoln) sells a broad portfolio of group insurance products, including disability and absence management, to employers nationwide. Lincoln has seen a significant increase in employers inquiring about integrated absence management programs to offer a seamless absence experience for employers and employees.

We would like to preface our comments with a statement of support for WHD's efforts to make the FMLA forms easier to understand and use. As a leave administrator, it is important for us to provide forms and communications throughout the duration of the absence that are both easy to understand for employees and comprehensive enough to assist employers with compliance with various eligibility and entitlement requirements, required communications, and strict adherence to timelines.

Lincoln appreciates the opportunity to provide comments and share our observations on WHD's proposed revisions to the FMLA forms.

**Form WH-380-E: Certification of Health Care Provider for Employee's Serious Health Condition**

**Section:** II – Health Care Provider  
**Part:** A – Medical Information  
**Field:** Instructions

**Page Number:** 3

The instructions state: "For the questions below, check the box indicating appropriate medical information". We recommend that WHD consider adding the following instruction: "All check boxes (including sub-check boxes in questions 3 and 4 and additional information in questions 5 and 8) must be completed." This would clarify that health care providers must provide complete medical information as requested in these specific questions for an accurate FMLA determination and not just check boxes.

**Section:** II – Health Care Provider **Page Number:** 3  
**Part:** A – Medical Information  
**Field:** (8) Conditions Requiring Multiple Treatments

This field asks the health care provider to disclose when the patient is scheduled to receive multiple treatments. We recommend that WHD consider amending this question to allow for an answer as to how frequently the treatments are necessary even if they have not been currently scheduled. We suggest adding “If treatments have not been scheduled, please provide an estimate of frequency and duration.” This allow the health care provider to provide an estimate when exact dates of treatment are unknown.

**Section:** II – Health Care Provider **Page Number:** 4  
**Part:** B – Amount of Leave Needed  
**Field:** (1) Incapacitated for a Continuous Period of Time

This field asks the health care provider to disclose that the patient was or will be incapacitated for a continuous period of time due to his/her medical condition and to provide estimated beginning and end dates. We recommend that WHD consider amending the field to indicate separate start and end date lines. The single line may lead to health care providers to overlook the need to enter both a start *and* end date.

**Section:** II – Health Care Provider **Page Number:** 4  
**Part:** B – Amount of Leave Needed  
**Field:** (4) Estimated Frequency and Duration

This field asks the health care provider to provide their best estimate for the frequency and duration for intermittent leave episodes, including episodes of incapacity. We recommend that WHD consider also asking for frequency and duration for treatment, since this is information the employers and administrators also need this information for FMLA determinations. We recommend phrasing the instruction as follows: “Due to the condition it was/it is/will be medically necessary for the employee to be absent from work on an intermittent basis (periodically), including any foreseeable or unforeseeable episodes of incapacity (ie, episodic flare-ups) or for treatment.”

**Section:** II – Health Care Provider **Page Number:** 4  
**Part:** B – Amount of Leave Needed  
**Field:** (5) Reduced Schedule Basis

This field asks the health care provider to provide their best estimate of the reduced work schedule the employee needs. We recommend that WHD clarifying the direction to the health care provider. As drafted, it is unclear whether the health care provider is indicating the time the employee may miss work or whether the health care provider is indicating the time the employee should work.

**Form WH-382: Designation Notice**

**Section:** I – Employer  
**Field:** FMLA leave approval

**Page Number:** 1

This field states: “Your FMLA leave request is Approved. All leave taken for this reason will be designated as FMLA leave.” We recommend that WHD add a selection for partially approved leave. We often have cases where an employee’s entire request cannot be approved but part of it can be. For example, an employee may not be eligible for the first two weeks of a requested four week leave. In this case, the first two weeks would be denied, but the second two week would be approved. We recommend allowing space for this option and room to allow the employer to explain why part of the leave has been denied and part of the leave has been approved. We foresee confusion if the employee becomes eligible after the requested start date or he/she exhausts before the requested end date. We request that the WHD consider adding a field for specific dates.

We hope you find our comments and suggestions useful and meaningful as WHD continues to improve upon the FMLA forms.

Sincerely,

A handwritten signature in black ink, appearing to read 'plazuniga' in a cursive, stylized script.

**Patricia Lauren D. Zuniga**  
Compliance Consultant, Group Protection Legal and Compliance  
Lincoln Financial Group  
PatriciaLauren.Zuniga@lfg.com