

Waterman, Robert - WHD

From: Jennifer A. Powell <jpowell@edlaw.com>
Sent: Tuesday, October 01, 2019 3:10 PM
To: WHDPRAComments
Subject: RE: Comment on WH-382

In conjunction with my comment below about WH-381, if you retain the language that tells employees they “still have FMLA leave available,” it seems wrong to have a space on WH-382 to turn around and tell them the opposite:

- o Your FMLA Leave request is Not Approved: (Select as appropriate)
- o As of the date the leave is to start, **you do not have any FMLA leave available to use.**

Again, my suggestion is to not include information about that on WH-381, but if you are going to retain it, you should also have the option of saying they don’t have leave available there. Then it is not needed on WH-382.

From: Jennifer A. Powell
Sent: Tuesday, October 1, 2019 2:02 PM
To: 'WHDPRAComments@dol.gov' <WHDPRAComments@dol.gov>
Subject: Comment on WH-381

I have always taken issue with the following language, particularly the bolded language (emphasis added) in Section II (formerly Part B) of the WH-381:

As explained in Section I, you meet the eligibility requirements for taking FMLA leave **and still have FMLA leave available in the applicable 12-month period.**

Nowhere in Section I or former Part A does it tell the employee that they have or have not used any of their entitlement and whether they have any of their entitlement left. I think there could be a line added to Section I that says, “Although you are an eligible employee under the FMLA, you already have used all 12-weeks of your entitlement during the applicable 12-month period.” Or it can just be left to the WH-382 for the employer to tell them they do not qualify for FMLA leave.

In Section III, Part B, it would be helpful if there was an “Other” category. Texas educators are required to be receive “temporary disability leave” that doesn’t fit the categories but is allowed to run concurrently. It is unpaid so maybe doesn’t fit perfectly here, but it is nice to be able to check it off here rather than provide a separate notice.

Jennifer A. Powell

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