

From: [Erlandsen, Linda](#)
To: [WHDPRAComments](#)
Cc: [Erlandsen, Linda](#)
Subject: US DOL WHD Control Number 1235-0003 - Comments on Proposed FMLA Forms Revision
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Attachments: [image001.png](#)

Dear Robert Waterman and/or others concerned:

First I'd like to say "thank you" for the time you and others have spent drafting the proposed FMLA forms revisions. This is a large task to undertake and I'm almost certain you have been receiving comments with many varying opinions (no one size fits all to make everyone happy).

As the City of Portland's FMLA Program Coordinator, in the state of Oregon which also has its own state family medical leave law (OFLA), I would like to make the following comments on a couple of the proposed forms revisions – collected from several of my bureau-level FMLA Coordinators and myself:

WH-380-E, Certification of Health Care Provider for Employee's Serious Health Condition

- **Top of each page (page 2-5)** - Placing the "Employee Name" at the top of each page seems redundant; we do not commonly have any issues in receiving loose or unidentified certification pages.
- **Under Section II, Part A: Medical Information (page 2)** – more attention should be made to the 2nd and last sentences about the HCP's answers should be their best estimate and that terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient. Perhaps enlarge the font or make all of this bold. Would also be helpful to remind HCP's not to leave answers blank. These are some of the most common reasons where we often find a need to request additional information;
- **Under Section II, Part A: Medical Information, #3 (page 3)** – Instructions say to check the box indicating appropriate medical information. We feel this could be made more clear by saying to check the box and indicate appropriate medical information (to prevent HCP's leaving responses blank);
- **Under Section II, Part A: Medical Information, #3a-8 (page 3)** – It was suggested to enlarge the font or make the font bold for each of the categories, similar to page 6 (*i.e., Inpatient Care, Incapacity Plus Treatment, Pregnancy, etc.*);
- **Under Section II, Part A: Medical Information, #3a-8 (page 3)** – should there also be an "Other" option for absence situations that may not meet the definition of a serious health condition. This feels like we are requiring the HCP to fit the employee into only one of the categories. The employer should be making this determination based on the HCP's information – not the other way around. This doesn't seem to allow for an employee who may ask their HCP to complete the form, but the employee does not have a qualifying serious health condition (*ex. employee has only been off work for a severe cold not requiring "plus treatment"*);
- **Under Section II, Part A: Medical Information, #4c (page 3)** – There is no box to check if the HCP hasn't or won't be prescribing medication. Without a "no" box to check, it may be difficult to determine without additional information whether the HCP has no intent in prescribing medication or simply neglected/overlooked answering all of this category;

Under Section II, Part B: Amount of Leave Needed (page 4) – May be helpful to add a reminder at the top for the HCP to not use vague or ambiguous terms or to leave requested responses blank. This page of information is where we most often see HCP's make mistakes or omit needed information on the certification form;

- **Under Section II, Part B: Amount of Leave Needed, #1 (page 4)** – may be helpful to underline the word continuous and/or to repeat it in the 2nd sentence for beginning and end date for the “continuous” period of incapacity. HCP's will often put dates in this question, but the employee only needs intermittent treatment or care. I think it would also be helpful to have the response line broken into 2 sections, such as _____ thru _____;
- **Under Section II, Part B: Amount of Leave Needed, #2-3 (page 4)** – seems like the question and example should include some frequency and duration information (*e.g. prenatal appointments 1x per week, 0-4 hours per appointment*). If the frequency and duration information for doctor's appointments and treatment visits is supposed to be captured in Question #3 or #4, this can be confusing. Not all treatment such as physical therapy is performed by “other health care provider(s)”. For example, we have quite a few employees who have both their doctor's visits and physical therapy/treatment visits all with the same HCP (ex. Kaiser Permanente clinics, D.O. offices, etc.);
- **Under Section II, Part B: Amount of Leave Needed, #5 (page 4)** – would be helpful to have clarifying language as to whether the reduced schedule is the time the employee “may work” or the time they need to be “off work”. Have seen certifications completed both ways and can be difficult to decipher if the HCP meant the employee can only work 2 hours per day, or if they need to reduce their schedule by 2 hours per day, for example.
- **Under Section II, Part B: Amount of Leave Needed, after #5 (page 4)** – no space given for the HCP to make any additional comments or notes. This is often where we find needed details or explanations for the intermittent leave being indicated above. Kaiser NW in particular will use this space to outline the FMLA duration.
- **Page 6** – we like the addition of the Definition of a Serious Health Condition as part of the certification form for the HCP's reference. But overall the certification form is still too long – proposed 6 pages versus 4 pages currently.

WH-380-F, Certification of Health Care Provider of the Family Member

Most of our comments for this form are similar to the comments noted above (for the Employee's SHC), with the addition of:

- **Under Section II – Employee, #2a (page 2)** – In Oregon, we also have state family medical leave (OFLA) that we use the US DOL's certification form for both FMLA and OFLA. As OFLA has an expanded definition of family members (i.e., parent in laws, grandparents, grandchildren, same sex domestic partner, etc.), could there be an additional check box added for “Other Family Members” with a line for the employee to fill in the “relationship of family member to you” (similar to page 1 of the current form)?
- **Under Section III – Health Care Provider, #5a-10 (page 3-4)** – If 5a-b are going to be on a separate page from 6a-10, then it may be helpful to repeat the instructions for this section from page 3 onto the top of page 4 – or to say “Continued” at the top. One would hope that a HCP would be able to figure out #6a-10 were a continuation from the previous page, but I wouldn't

count on this being done 100% correctly.

- **Page 6** – Like above, the revision of this form does not make it any shorter nor reduces paperwork. This is currently a 4 page form that is now being proposed to be a 6 page form.

Overall, I personally feel that the current Employee and Family Member certification forms work fairly well for us, if the HCP's would not give vague/ambiguous responses (such as "unknown" or "tbd" or "lifelong") or omit filling out lines.

The section of the current forms that need the most improvement is the section on "amount of care needed" (Part B). This is the section(s) that HCP's seem to get the most mixed up on – particularly the questions on continuous incapacity and reduced schedule hours/days for the employee, and the length/amount of care that an employee may need to provide for a family member (i.e., family member's own period of incapacity versus how much of this the family member needs someone to provide them care – ex. female spouse may need 8 weeks of childbirth recovery from a c-section for herself, but the non-birthing parent only needs to provide her with care assistance for 2-3 weeks).

Of note, we did not review Certification Forms WH-384, WH-385, and WH-385-V for comment, as we have a very low volume of qualifying military-related leaves and rarely use these forms. We also did not review for comment forms WH-381 (Eligibility Notice) nor WH-382 (Designation Notice), as we use a hybrid version of these notices due to our combined FMLA (federal) and OFLA (state) leave laws.

If you should have any questions regarding our comments above, or would like to further discuss any of this information, please contact me at 503-823-3404 or email to Linda.Erlandsen@portlandoregon.gov.

Thank you for your time and consideration in reviewing our comments on these proposed forms revisions.

Linda Erlandsen

City FMLA Program Coordinator

Ph: 503.823.3404 | Fax: 503.865.3131



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