



PROPOSED FMLA REGULATIONS WOULD HELP EMPLOYERS

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The Department of Labor's (DOL) February 11, 2008 proposed regulations consolidate and reorganize many sections of the regulations to the Family and Medical Leave Act (FMLA) in an effort to make them more user-friendly. There are substantive changes, too, and many of them would benefit employers.

Notice requirements: Employees still need not mention the FMLA when requesting leave, but the proposed regulations would require an employee to indicate (a) that he or she is unable to perform functions of the job (or a family member is unable to participate in regular daily activities), (b) the anticipated duration of the absence, and (c) whether the employee (or family member) will visit a health care provider. Furthermore, merely calling in "sick" without providing further information would be considered insufficient notice to invoke FMLA rights.

Medical Certification: The DOL proposes changes to the medical certification form to request more specific information, such as (a) the job functions the employee cannot perform and (b) the anticipated frequency and duration of "flare-ups" of chronic conditions. The proposed regulations would also permit employers to contact a health care provider directly, rather than having to

use its own health care provider, as long as it complies with HIPAA privacy rules. Furthermore, an employer could make the contact without the employee's consent to authenticate a certification, although consent is still required to *clarify* any content.

Serious Health Conditions: For leave of more than three consecutive calendar days plus two treatments, the current regulations leave open-ended when such treatments occur. The proposed regulations would require the treatments/health care provider visits to be within 30 days of the beginning of the period of incapacity. Also, the current regulations call for "periodic" visits for a chronic condition. The proposed regulations specify that "periodic" visits must occur twice or more per year.

Health care providers: Under the proposed regulations, Physician Assistants would be health care providers without previous limitations on their status.

The DOL requests comments to the proposed regulations by April 11, 2008.

If you have questions about these developments, please contact the Elarbee Thompson attorney with whom you normally work.