



DOL Updates Model FMLA Forms

Provided by JRG Advisors, LLC

Quick Facts

- The model FMLA forms expired earlier this year, on Feb. 28, 2015.
- The DOL repeatedly extended the forms' expiration date while the forms were in the process of being updated.
- The DOL recently updated its FMLA forms.
- The updated forms have an expiration date of **May 31, 2018**, and include information on the Genetic Information Nondiscrimination Act.

Employers that use the model FMLA forms should start using the DOL's updated model forms as soon as possible. The model FMLA forms are available on the DOL's [FMLA Web page](#).

The Family and Medical Leave Act of 1993 (FMLA) gives an eligible employee the right to take unpaid, job-protected leave in certain situations, including the birth, adoption or foster care placement of a child, his or her own or a family member's serious health condition and a family member's military service.

To administer FMLA leaves, employers must provide certain notices to employees, such as a notice designating whether a requested leave will qualify as FMLA leave. Employers may also require that employees provide certifications to substantiate their eligibility for certain types of FMLA leave.

The Department of Labor (DOL) has provided model notices and certifications to help employers administer FMLA leaves. The DOL's model FMLA forms are optional; employers may decide to customize the DOL's model forms or create their own FMLA forms. The model FMLA forms are available on the DOL's [FMLA Web page](#).

The DOL's model FMLA forms expired on Feb. 28, 2015. After a few months of extending the expiration date on its model FMLA forms, the DOL recently issued updated model forms. The

updated model FMLA forms include the following changes:

- The updated model forms have an expiration date of **May 31, 2018**; and
- The model certification forms that request medical information have been updated to include information on the **Genetic Information Nondiscrimination Act (GINA)**.

Action Steps: Employers that use the model FMLA forms should start using the DOL's updated models as soon as possible. Employers that have developed their own forms should review the DOL's updated models to make sure their own medical certification forms contain GINA information.

Employers should also confirm that they are using the most updated [FMLA poster](#) from February 2013.

GINA Requirements

Title II of GINA, which applies to employers with **15 or more employees**, prohibits employers from discriminating against employees or applicants based on genetic

information. GINA is enforced by the Equal Employment Opportunity Commission (EEOC).

Under GINA, employers may not request genetic information, subject to a handful of narrow exceptions. As one of these exceptions, GINA permits employers to request family medical history as part of the certification process for FMLA leave (or leave under similar state or local laws or pursuant to an employer policy), where an employee is asking for leave to care for a family member.

This exception does not apply when an employee is asking for leave because of his or her own serious health condition. However, employers do not violate GINA if they inadvertently acquire genetic information. An employer's receipt of genetic information in response to a lawful request for medical information is inadvertent when the request specifically directs the health care provider not to provide genetic information.

Updated Model FMLA Forms

The DOL updated the following model FMLA forms:

- Certification of Health Care Provider for Employee's Serious Health Condition ([Form WH-380-E](#));
- Certification of Health Care Provider for Family Member's Serious Health Condition ([Form WH-380-F](#));
- Notice of Eligibility and Rights & Responsibilities ([Form WH-381](#));
- Designation Notice ([Form WH-382](#));
- Certification of Qualifying Exigency for Military Family Leave ([Form WH-384](#));
- Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave ([Form WH-385](#)); and
- Certification for Serious Injury or Illness of a Veteran for Military Family Leave ([Form WH-385-V](#)).

The DOL updated all of these forms to include an expiration date of May 31, 2018.

Additionally, in response to a request by the EEOC, the DOL updated the medical certification forms to include language regarding GINA's restrictions on collecting and maintaining genetic information.

