

Employment Edge 83rd Edition - The U.S. Department of Labor Proposes New FMLA Regulations and Requests Public Comments

February 1, 2008

On February 11, 2008, the U.S. Department of Labor proposed the first major revision of the FMLA regulations since the original rules were issued thirteen years ago.

According to the Department of Labor, the proposed new rules reflect the Department's 15 years of experience enforcing and administering the FMLA, the Department's discussions with people affected by the FMLA as well as the comments submitted in response to the Department's request for information back in December, 2006. Among other things, the proposed rules would change aspects of:

- the definition of "serious health condition"
- an employer's obligations to provide notice of FMLA rights to employees
- the process by which an employer can challenge the medical certification provided by the employee's health care provider or gather additional information from the health care provider
- the employee's obligation to give notice to the employer of a need for FMLA leave
- an employer's ability to deny a bonus payment to an employee who has taken FMLA leave and not met the bonus requirement.

The proposed regulations also note the existence of the new leave of absence rights created by passage of the National Defense Authorization Act. In particular, the leave of absence rights for eligible employees who need leave to care for a covered service member with a serious illness or injury or because of a "qualifying exigency" arising out of a family member's active duty or call to active duty. The proposed regulations do not, however, supply a definition of "qualifying exigency" or address other practical aspects of the administration of these new leave entitlements. Instead, the Department requests comment on these new features of the FMLA along with the other changes in the proposed new rules.

The period for submitting comments on the proposed regulations runs until midnight on April 11, 2008.

If you have any questions regarding the proposed FMLA regulations, or if you would like assistance in preparing and submitting comments, please feel free to contact Carl Crosby Lehmann or another member of the Gray Plant Mooty Employment and Labor Law Practice Group.

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