

FMLA Compliance – Will You Be Ready If The DOL Comes Knocking On Your Door?

May 30, 2014 | [Employee Health Issues, Labor And Employment](#)

Well, there you are, opening the mail and what do you see? A letter from the U.S. Department of Labor notifying you that an investigator will be dropping by on some date certain in the next two weeks to review your FMLA policy and the forms used for administering FMLA leave for your employees. Or, perhaps the letter is more specific in that it mentions a particular employee and requests a review of all documents related to that employee's request for leave? In either case, will you be prepared for an on-site visit by the DOL? If you did not immediately answer that question with an affirmative response, then keep reading. There are a few simple steps that you can do now to "be prepared" in either scenario.

- First, do you have the required FMLA poster up in the workplace? And, is that poster current? The DOL issued a revised version of the poster – Employee Rights and Responsibilities Under The Family and Medical Leave Act – in February 2013. If you have any doubt as to whether you have the correct posting, check the bottom right-hand corner to ensure it says "Revised February 2013." And, if you have a substantial portion of Spanish-speaking employees, do you need to post the Spanish-version of the posting?
- Second, are you using the correct forms in administering FMLA leave? And, again, are those forms the most current version issued by the DOL (or are the forms otherwise in compliance)? In February 2013, the DOL issued a revised version of certain forms, including the Notice of Eligibility and Rights and Responsibilities (FMLA) – Form WH-381. The revised form has a "Revised February 2013" label in the bottom, right-hand corner. The DOL also issued revised versions of WH-384 (Certification for Qualifying Exigency for Family Medical Leave), WH-385 (Certification for Serious Injury or Illness of a Current Service Member – for Military Family Leave), and WH-385V (Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave). Be sure you're using the correct forms.
- Third, if you have an employee handbook, is your FMLA policy in the handbook? And, will your FMLA policy withstand a review by the DOL? For example, does your FMLA policy contain all of the items required by the FMLA poster? Have you adequately addressed all of the other FMLA requirements? You can be sure the DOL will carefully review your FMLA policy to ensure compliance, so be prepared.
- Fourth, are you confident your HR department and your front-line managers have a full understanding of the FMLA and your FMLA policy, and that they can confidently address situations implicating the FMLA, especially in intermittent leave situations? You can have a fully compliant policy, use the correct forms, and have the necessary postings, but if you don't provide adequate training and guidance to your front-line managers it could all be for nothing.

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While this list provides you with a few helpful tips toward becoming FMLA compliant, the list is certainly not comprehensive. Only a thorough review will truly help identify potential vulnerabilities present in your organization should the DOL come knocking on your door.