

eLABORate

February 18, 2008

Department of Labor Proposes Major Revisions to Family and Medical Leave Act Regulations

On February 11th, the Department of Labor unveiled a proposal to make wide-ranging revisions to its Family and Medical Leave Act (FMLA) regulations. The proposed regulations, which come in at just under 500 pages, represent the first major update to the FMLA since its enactment in 1993. Employers should expect to make significant changes to their employee leave policies once the final version of the regulations takes effect.

Highlights of the proposed regulations include changes to the medical certification process, which would allow employers to obtain more information directly from health care providers about employees requesting leave. In addition, the new regulations would clarify requirements as to the number and frequency of visits to health care providers for employees claiming “serious” or “chronic” health conditions.

Other noteworthy changes include: (1) requiring strict compliance with the employer’s notification policy, rather than giving employees two days after an absence begins to provide notice of their intent to take FMLA leave; (2) providing that employees on FMLA leave are no longer entitled to a “perfect attendance” or similar bonus; (3) giving employers five days, rather than the current two, to notify an employee of eligibility for leave, and designate leave as FMLA-covered; and (4) clarifying that time spent performing light duty on return from leave does not count against the total leave time allowed under the Act.

Employers and other interested parties have until April 11, 2008 to comment on the new regulations before they take effect. This mandatory comment period is frequently extended. In this case, however, many observers expect that the Department of Labor will move quickly to implement the new regulations, given the limited time remaining in the current presidential administration.

To be clear, the new regulations are not final. They may change during the comment period. And in any event, they will not take effect until later this year, at the earliest. Employers should wait to revise their leave policies until the final regulations are released. When that happens, Phelps Dunbar attorneys will be ready to assist in implementing the regulations and revising employee leave policies as necessary.

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