



Employment Law **ALERT** DECEMBER 2, 2008

They're here! **The New FMLA Regulations**

The long-awaited new Family and Medical Leave Act regulations have been published and will go into effect January 16, 2009. These new rules and the associated Department of Labor approved forms are intended to provide employers with more tools to administer FMLA leave. Among other changes:

- In order to qualify as a “serious health condition” that is chronic in nature, the employee must demonstrate they have received two or more medical treatments per year for their condition.
- Within five business days of becoming aware of the possibility of FMLA leave, the employer must advise the employee whether they are eligible for FMLA leave. The DOL’s new Notice of Eligibility and Rights & Responsibilities alert employees of their obligation to provide adequate medical certification, their responsibilities for health insurance premiums, and whether they will be required to use accrued, paid leave concurrently with their FMLA absence.
- In addition to placing the employee on notice that their absence will be counted towards their FMLA entitlement, the new Designation Notice advises whether they are required to present a fitness for duty certificate before returning to work. The Designation Notice also tells the employee whether their physician’s report is complete and satisfactory.
- The new Certification of Healthcare Provider is much more helpful to an employer trying to police FMLA absences. The employee’s healthcare provider is required to give more specific information as to past treatment, as well as follow-up treatment and recovery. For intermittent or reduced schedule, the healthcare provider must be specific as to the nature and extent of any intermittent absences and provide greater explanation of the timing and nature of any episodic flare-ups.

These revised forms will be made available by the Department of Labor on their website, www.dol.gov, after the effective date.

In another significant change, employees will be required to follow an employer’s usual and customary rule for reporting their absences. This can include call-in procedures for absences caused



by FMLA-related medical conditions.

The new regulations and the Department of Labor forms will assist the employer in monitoring FMLA leave abuse. Use the next 45 days to update your old FMLA policy and forms and take advantage of ways in which these new rules help you administer your FMLA leave practices.

If you have further questions regarding the new FMLA regulations, please do not hesitate to contact any of the McAfee & Taft labor and employment attorneys listed on the next page.

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