

Alert

New Poster and Forms for US Employers

March 19, 2013

Form I-9

The U.S. Citizenship and Immigration Services (“USCIS”) released a new Employment Eligibility Verification Form I-9.¹ Form I-9 is used for verifying the identity and employment authorization of individuals hired for employment in the United States, and employers must complete a Form I-9 for every new employee. The updated Form I-9 may be used immediately by employers, and must be used exclusively for all new hires and re-verifications beginning on May 7, 2013. Until then, employers may continue to use previous versions of the Form I-9 dated Feb. 2, 2009 and Aug. 7, 2009. The new Form I-9 revises the layout of the form (making it two pages), greatly expands the form’s instructions, and adds certain data fields, including *voluntary* fields such as employees’ telephone and email addresses. Employers should review the updated Employer Handbook² issued by USCIS on completing the new I-9.

Family and Medical Leave

Covered employers must immediately replace their Family and Medical Leave Act (“FMLA”) poster with a new one that is now available.³ In addition, employers who use the U.S. Department of Labor (“DOL”) model forms should begin to use the DOL’s updated set,⁴ which includes a new form for Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave and a few changes to the prior model forms. These new forms and the new poster are the result of the DOL’s Final Rule,⁵ which amends certain regulations of the FMLA, primarily regarding coverage of exigency and military caregiver leaves.

The eligibility for military caregiver leave has been expanded to cover leave to care for former members of the military and includes a definition of “covered veteran.” The Final Rule clarifies that a “serious injury or illness” can include a preexisting condition aggravated by military service in the line of duty. The Final Rule also addresses the circumstances and terms of qualifying exigency leave available to eligible employees with covered family members in the military.

The DOL also clarified regulations regarding methods for calculating an employee’s FMLA leave time — specifically, minimum increments to be used in calculating intermittent, reduced-schedule or other forms of leave, and the calculation of leave time when it is physically impossible for an employee to start or end work midway through a shift. The Final Rule adds language to the FMLA’s recordkeeping requirements, setting forth an employer’s obligation to comply with the confidentiality requirements of the Genetic Information

¹ The new USCIS Form I-9 can be found at <http://www.uscis.gov/files/form/i-9.pdf>.

² Available at <http://www.uscis.gov/files/form/m-274.pdf>.

³ Available at <http://www.dol.gov/whd/regs/compliance/posters/fmlaen.pdf>.

⁴ Available at <http://www.dol.gov/whd/fmla/2013rule/militaryForms.htm>.

⁵ Available at <http://www.gpo.gov/fdsys/pkg/FR-2013-02-06/pdf/2013-02383.pdf>.

Nondiscrimination Act of 2008 (“GINA”). GINA safe harbor language is not included in the FMLA model forms and should be separately provided to employees along with FMLA certifications as follows:

The Genetic Information Nondiscrimination Act of 2008 (“GINA”) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information. “Genetic Information” as defined by GINA includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Employers must further maintain FMLA records in accordance with the confidentiality requirements of GINA.

Given the changes in employment verification processes and FMLA leave and recordkeeping requirements discussed in this *Alert*, employers are encouraged to review and update all of their relevant policies, postings and forms.

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