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THE DOL'S NEW FMLA POSTER – DOES IT IMPACT YOUR FMLA POLICY?

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By now, you're likely aware (and if you're not, you should be) that, in April, the U.S. Department of Labor ("DOL") issued a new "Employee Rights Under The Family And Medical Leave Act" poster, to replace the prior poster on this subject.

The DOL has made clear that the old poster (revised Feb. 2013) is still sufficient – until further notice – to meet the posting requirement under the FMLA regulations. Thus, you've probably already given some thought as to whether and when to proceed with updating your posters.

As you consider this step, however, have you also considered whether the new *poster* impacts your *policy*?

The FMLA regulations provide that, if an FMLA-covered employer has any FMLA-eligible employees, and if the employer has a written policy on the subject of leave/benefits, then the employer must ensure that its policy contains the same information that is in the FMLA poster. (The notice requirements are discussed at pp. 12-13 of the helpful new publication from the DOL, "The Employer's Guide to The Family and Medical Leave Act".)

Accordingly, now is a good time to review your FMLA policy to ensure that it contains all of the information that is in the new poster. Of course, it is to your benefit to include *additional* provisions in your policy, such as a prohibition on the misuse of FMLA leave. But at a minimum, all of the information that is in the poster must be included.

Note that "all" means "all"; your policy must include, for example, not only information about the *employee's* rights and responsibilities, but also the information in the poster regarding the *employer's* responsibilities, along with enforcement information such as the employee's right to file a complaint with the U.S. Department of Labor ("DOL") and the DOL's contact information.

For this reason, some employers choose to comply with the FMLA notice regulations by attaching a copy of the FMLA poster to their handbook, instead of incorporating all of the language in the poster into their policy. If that's your approach, just ensure that you update the attachment in light of the new poster.

Either way, however, you should make sure that your policy is compliant. And because the information in the poster represents basic FMLA information, you should take steps to review and, if necessary, revise your FMLA policy now, even if you wait to hang up the new FMLA poster.

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