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## **DOCUMENTATION**

### **FMLA 'form' over function**

by Lauren E. Moak

*Many employers use sample forms they find online. Sample forms approved by the governmental agencies responsible for enforcing the laws at issue are particularly useful. But what do you do when those forms are expired or outdated? We can help!*

#### ***What you should know***

Many governmental agencies issue sample documents designed to assist employers in properly implementing certain laws. When that happens, the forms must go through a review process overseen by the Office of Management and Budget (OMB). If review of a form is successful, it can be approved by the OMB for up to three years.

In 2008, the U.S. Department of Labor (DOL) issued forms designed for Family and Medical Leave Act (FMLA) recordkeeping. The forms were approved by the OMB for the maximum three-year period, which expired December 31, 2011. New FMLA forms have been submitted to the OMB for approval, but the process hasn't yet been completed. While the DOL has explicitly approved the use of the expired FMLA forms, the documents don't address recent changes in the law.

#### ***Our old friend, GINA***

The most significant change in the law is the issuance of regulations implementing the Genetic Information Nondiscrimination Act of 2008 (GINA). The regulations were issued in 2010 and took effect in January 2011.

GINA generally prohibits you from obtaining employees' genetic

information, except in limited circumstances. Because of the broad scope of the Act's prohibition, many employers were concerned about its impact on their businesses. The 2010 regulations addressed many of those concerns and created an exception when employers inadvertently obtain an employee's genetic information. To take advantage of the exception, you are advised to include "safe-harbor" language in medical forms, including FMLA documentation. The 2008 FMLA forms issued by the DOL do not contain that language.

### ***Bottom line***

Online forms are great resources for employers. However, like all written documents, they need to be updated to keep pace with changes in the law. In addition, forms that are taken from unofficial sources generally should be reviewed by an attorney to make sure they comply with relevant laws.

When the issuing agency permits, you may use expired forms issued by the federal government. However, expired forms are more likely than most to provide outdated information. If you're using the DOL's expired FMLA forms, contact an attorney to advise you on a GINA safe-harbor supplement. It's a simple change than can save lots of trouble!

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