



## PHILLIPS LYTLE LLP CLIENT ALERT

### LABOR & EMPLOYMENT

JUNE 2015



## *Employers Should Use New FMLA Forms*

The U.S. Department of Labor (DOL) issued updated Family and Medical Leave Act (FMLA) notices and forms on May 27, 2015. The new forms are approved for use through May 31, 2018, and are available on the DOL's [website](#). Although employers are free to design and use their own FMLA forms, so long as they provide the notices and information required by the FMLA and its regulations, most employers use the DOL forms for convenience and to avoid compliance violations.

The most significant change to the forms is the inclusion of a “safe harbor” provision directing persons providing medical information about an employee not to disclose any genetic information, as defined by the Genetic Information Nondiscrimination Act of 2008 (GINA). GINA is enforced by the Equal Employment Opportunity Commission (EEOC) and prohibits employment discrimination based on genetic information. It also restricts the ability of employers to request the genetic information of an employee or that of his or her family members. Under regulations issued by the EEOC, an employer’s inadvertent receipt of genetic information does not violate GINA if the employer includes “safe harbor” language directing a medical provider not to release any genetic information in response to the request.

The DOL’s GINA “safe harbor” language in the new FMLA forms and notices states:

Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee’s family members, 29 C.F.R. § 1635.3(b).

As a result, employers should immediately replace earlier versions with the new FMLA forms and notices. We also recommend that employers review their other forms and documents used to request medical-related information in other contexts, such as for reasonable accommodation purposes under the Americans with Disabilities Act, to ensure that they also contain the necessary GINA “safe harbor” language.

### **Additional Assistance**

*For more information regarding the new FMLA forms, please contact any of the attorneys on our Labor & Employment Practice Team. ■*



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