

PUBLICATION

Knock Knock, Who's There? The DOL Announces Renewed Focus on On-Site FMLA Investigations

June 06, 2014

In April 2014, new FMLA Branch Chief Helen Applewhaite shed some light on the DOL's current enforcement initiatives. In particular, Applewhaite reiterated the DOL's renewed focus on conducting on-site compliance investigations, an initiative that was first announced last year under former Branch Chief Diane Dawson. While initially the DOL promised only an increase in the number of on-site investigations, Applewhaite indicated that on-site investigations would now be standard practice. This signals a big change, as on-site visits for FMLA investigations have been rare to date. Accordingly, employers should expect to see DOL investigators on their doorsteps more often in the coming years.

In addition, Applewhaite shared a few more things that employers can expect regarding the FMLA's current enforcement agenda:

- **Recordkeeping is key:** As with DOL investigations under the FLSA and EEOC investigations, employers should expect to see an uptick in requests for documents and information that go beyond the scope of any single charge to identify "systemic" FMLA issues. Standard requests will seek information for a two-year period.
- **Managers will be interviewed:** As part of its on-site investigations, the DOL intends to interview managers and other employees to ensure that they are properly trained on FMLA policies and procedures. In particular, investigators will expect managers to be able to walk through an employee's leave request from start to finish.
- **Focus where leaves of absence most common:** The DOL intends to focus on departments or job categories in which leaves of absence are the most frequent. Accordingly, employers should focus on those areas first in preparing for the possibility of a DOL audit.

In light of the DOL's enhanced focus on enforcement activity under the FMLA, employers should engage in a thorough self-audit to ensure they are fully prepared for a visit from the agency. Key focal points should include:

- **Posting Requirements:** Ensure your employee handbook contains an accurate description of your FMLA policy, and that you have posted the DOL's FMLA poster in a prominent position for all employees to see.
- **FMLA Policy:** Review your current FMLA policy to ensure that the March 2013 FMLA regulations have been incorporated. A breakdown of these regulations is available here: <http://www.dol.gov/whd/fmla/2013rule/comparison.htm>. Particular areas of focus under the new regulations include the rules for calculating leave usage, military caregiver leave, and special rules for airline flight crews.
- **FMLA Paperwork:** Ensure your FMLA documentation is legally compliant. This includes notices of eligibility, notices of rights and responsibilities, certification forms, designation notices, job descriptions (to use for fitness for duty certificates), and any form correspondence used to communicate with employees regarding FMLA leave.
- **FMLA Practices and Procedure:** Ensure that all relevant managers have been thoroughly trained on your FMLA policy. If managers are not properly implementing the policy, then it does not matter that

the policy itself is legally compliant -- you will risk liability due to the missteps of poorly trained managers. Areas to watch for include handling of incomplete or insufficient medical certifications, recertification, managing concurrent/consecutive leaves under FMLA and/or other laws, and reinstatement.

- State Leave Law: While not the focus of a federal DOL investigation, don't forget about any applicable state.