

Friday News Brief

Preferred Benefits Services Agency, Inc.



DOL Releases Updated FMLA Forms

In this issue:

DOL Releases Updated FMLA Forms	1
5 FAQs about the Obama-care Lawsuit Heard This Week	2 3
On Demand Staffing Websites Match Needs of Employers and Workers	4
Back to School Time Off Tips	5
6 Books on the Future of Work That Every HR Pro Should Read	6

The U.S. Department of Labor's (DOL) Wage and Hour Division has released an updated set of Family and Medical Leave Act (FMLA) forms for employers.

There's nothing different about these forms compared to the previous set — save an updated expiration date — [according to a blog](#) post by Jeff Nowak, co-chair of Franczek Radelet's labor and employment practice.

The previous forms were set to expire Aug. 31, but the new ones, available now, will be valid through Aug. 31, 2021, attorneys with Epstein Becker Green [wrote for The National Law Review](#).

It's been a fairly active week for DOL, which recently released a second round of opinion letters, including two on the FMLA. In one, the agency effectively signed off on an employer's no-fault attendance policy, in which employees on leave had their attendance "points" frozen during FMLA leave. In the other, DOL specified that employees could qualify for FMLA leave after donating an organ.

Leave laws remain a source of stress for HR, especially as they intersect with the Americans with Disabilities Act. Employment law experts continue to maintain that a thorough, interactive process between both sides is the surest way to provide a solid base for compliance. That means regular communication and an abundance of information sharing, as well as training to ensure that managers know how to recognize and respond to leave requests.

Additionally, HR must ensure that the

FMLA's notice requirements are met; that's where DOL's forms come in. While employers aren't required to use the agency's forms, many choose to do so because much of the information they contain must be incorporated into custom forms as well. DOL has very rigid requirements for FMLA notices, and employers often run afoul of them, creating major violations with seemingly minor infractions. But more often than not, it's human interactions — not use of the forms — that derail an employer's leave processes. It may be helpful for HR to keep a line-by-line cheat sheet on hand to keep things as simple as possible.

For easy reference, here are the links to the new FMLA notices and forms:

Notices

[WH-381 Notice of Eligibility and Rights & Responsibilities](#) (pdf)

[WH-382 Designation Notice](#) (pdf)

Certification forms

[WH-380-E Certification of Health Care Provider for Employee's Serious Health Condition](#) (pdf)

[WH-380-F Certification of Health Care Provider for Family Member's Serious Health Condition](#) (pdf)

[WH-384 Certification of Qualifying Exigency For Military Family Leave](#) (pdf)

[WH-385 Certification for Serious Injury or Illness of Current Servicemember — for Military Family Leave](#) (pdf)

[WH-385-V Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave](#) (pdf)

Source: HR Dive

Preferred Benefits Services

611 S. Sandusky St.

P.O. Box 868

Delaware, OH 43015

740.363.6028

800.558.5658

740.363.5292 f

info@prefben.com



5 FAQs About the Obamacare Lawsuit Being Heard This Week



“The GOP plaintiffs are seeking a ‘preliminary injunction’ on the law.”



Wednesday appeared to be yet another pivotal day in the life-or-death saga that has marked the history of the Affordable Care Act.

In a Texas courtroom, a group of Republican attorneys general, led by Texas’ Ken Paxton, faced off against a group of Democratic attorneys general, led by California’s Xavier Becerra, in a lawsuit aimed at striking down the federal health law. The Republicans say that when Congress eliminated the penalty for not having health insurance as part of last year’s tax bill, lawmakers rendered the entire health law unconstitutional. The Democrats argue that’s not the case.

But first, the sides argued before U.S. District Judge Reed O’Connor in Fort Worth, Texas, whether the health law should be put on hold while the case is litigated. The GOP plaintiffs are seeking a “preliminary injunction” on the law.

Ending the health law, even temporarily, “would wreak havoc in our health care system,” said Becerra in a call with reporters last week. “And we don’t believe Americans are ready to see that their children are no longer able to see a doctor or that they cannot get treated for a preexisting health condition.”

Here are five questions and answers to help understand the case, Texas v. U.S.

1. What is this suit about?

In February, 18 GOP attorneys general and two GOP governors filed the suit in federal district court in the Northern District of Texas. They argue that because the Supreme Court upheld the ACA in 2012 by saying its requirement to carry insurance was a legitimate use of Congress’ taxing power, eliminating the tax penalty for failure to have health insurance makes the entire law unconstitutional.

“Texans have known all along that Obamacare is unlawful and a divided Supreme Court’s approval rested solely on the flimsy

support of Congress’ authority to tax,” Paxton said in a statement when the suit was filed. “Congress has now kicked that flimsy support from beneath the law.”

The lawsuit asks the judge to prohibit the federal government “from implementing, regulating, enforcing, or otherwise acting under the authority of the ACA.”

2. Why are Democratic attorneys general defending the law?

The defendant in the case is technically the Trump administration. But in June, the administration announced it would not fully defend the law in court.

The Justice Department, in its filing in the case, did not agree with the plaintiffs that eliminating the tax penalty should require that the entire law be struck down. But it did say that without the tax, the provisions of the law requiring insurance companies to sell to people with preexisting conditions and not charge them more should fall, beginning Jan. 1, 2019. That is when the tax penalty goes away.

The Republican attorneys general say they still believe the entire law should be invalidated, but if that does not happen, they would accept the elimination of the preexisting condition protections.

The Democratic attorneys general applied to “intervene” in the case to defend the law in its entirety. They say they needed to step forward to protect the health and well-being of their residents. The judge granted them that status on May 16.

3. What would happen if the judge grants a preliminary injunction?

The GOP plaintiffs say the law needs to be stopped immediately, “both because individuals will make insurance decisions during fall open-enrollment periods and because the States cannot turn their employee insurance plans and Medicaid operations on a dime,” according to their brief.

But setting aside the ACA while the case proceeds “would throw the entire [health] system into chaos,” Becerra said. That’s be-



5 FAQs About the Obamacare Lawsuit Being Heard This Week

cause the ACA made major changes not just to the insurance market for individuals, but also to Medicare, Medicaid and the employer insurance market.

Even in 2012, when the Supreme Court was considering the constitutionality of the law before much of it had taken effect, some analysts from both parties predicted that finding the law unconstitutional could have serious repercussions for the Medicare program and the rest of the health care system.

In practice, however, even if Judge O'Connor were to rule in favor of the Republicans' request to stop the law's enforcement immediately, the decision could be quickly appealed up the line, including, if necessary, before the Supreme Court.

4. Is this case purely Republicans versus Democrats?

The case is largely partisan — with Republicans who oppose the health law arguing for its cancellation and Democrats who support it fighting to keep it in place.

But a friend-of-the-court brief filed by five law professors who disagree on the merits of the ACA said that, regardless, both the GOP states and the Justice Department are wrong to conclude that eliminating the tax penalty should result in the entire law being thrown out.

In this case, "Congress itself has essentially eliminated the provision in question and left the rest of a statute standing," so courts do not need to guess whether lawmakers intended for the rest of the law to remain, they wrote.

5. What is Congress doing about this?

Technically, Congress is watching the case just as everyone else is. But Republicans in particular, while they mostly oppose the health law, are aware that the provisions protecting people with preexisting conditions are by far the most popular part of the ACA. And Dem-

ocrats are already using the issue to hammer opponents in the upcoming midterm elections.

Last month, 10 GOP senators introduced legislation they said would maintain the ACA's preexisting condition protections in the event the lawsuit succeeds.

"This legislation is a common-sense solution that guarantees Americans with preexisting conditions will have health care coverage, regardless of how our judicial system rules on the future of Obamacare," said Sen. Thom Tillis (R-N.C.), the bill's lead sponsor, in a statement.

Critics, however, were quick to point out that the bill doesn't actually offer the same protections that are embodied in the ACA. While the health law requires coverage for all conditions without extra premiums, the GOP bill would require that insurers sell to people with preexisting conditions, but not that those policies actually cover those conditions.

Meanwhile, the Department of Justice also weighed in. Blocking Obamacare before January would "cause chaos in the insurance market," Deputy Assistant Attorney General Brett Shumate told Judge O'Connor.

While the federal government's position has been consistent since it first announced in June that it won't defend the law, the politics around the Republican-led effort to nullify Obamacare have been amplified in the run-up to the November congressional elections. Wednesday's court arguments come as Republicans try to defend their control of the House and Senate while many Democrats make health care a central issue in their campaigns.

O'Connor asked tough questions of all sides, including a group of Democratic attorneys general who've stepped in to defend Obamacare, and didn't signal how he will rule.

Source: *Benefitspro*



"...are wrong to conclude that eliminating the tax penalty should result in the entire law being thrown out."



On Demand Staffing Websites Match Needs of Employers and Workers



“...one advantage employers gain from using these platforms is an ability to...”



A new kind of jobs board has emerged to help businesses solve one of their most vexing challenges: filling job shifts on short notice.

When employees call in sick, or there's an unforeseen spike in product demand or special events, employers have to react quickly. Some web-based platforms can offer a more tech-savvy and efficient way for hourly workers to find work to supplement existing part-time jobs.

The sites, which include Snag, Wonolo and Shiftgig, combine the best of traditional staffing agencies and jobs boards, and eliminate the middleman between companies and those seeking hourly work.

The platforms target companies in industries like e-commerce, hospitality and retail that have a high need for hourly or gig workers to fill jobs on short notice. Candidates for these positions are screened and prequalified by recruiters working for the platforms.

These platforms are catering to a significant market. According to 2017 data from the U.S. Bureau of Labor Statistics, hourly workers represent almost 60 percent of the U.S. workforce.

"The sites are targeting, specifically, a large market of underemployed hourly workers," said Brian Blum, a senior analyst with the AIM Group, a consulting firm specializing in interactive media and classified advertising based in Orlando, Fla.

Blum said one advantage employers gain from using these platforms is an ability to gather data and assess local job markets in holistic fashion. "These sites have broad visibility, which gives them the capacity to provide more-accurate data to employers about how many hourly workers are available in their markets, what their skills are and the types of jobs or shift times they're looking for," Blum said.

Technology as Matchmaker

On the platform Snag, companies post openings for their hourly positions, and workers in the system are alerted to posts that match their skills and availability. Fabio Rosati, CEO of Snag, said the company has placed workers at 300,000 worksites in the United States and Canada.

Snag prequalifies workers through interviews

and background checks before adding them to its network, Rosati said, and pays them when the work is complete. Snag charges its employer clients a service fee on top of worker wages. The platform targets workers looking for both part-time jobs and individual shifts.

Rosati believes platforms such as Snag help reduce the "friction" hourly workers often experience in finding work. "People looking for shifts are often seeking work to supplement existing incomes," he said. "But that search can be time-consuming, especially when you consider someone might have to search for four or more hours for a weekend shift that pays \$100."

Wonolo, based in San Francisco, is another hourly staffing platform designed to help businesses find workers for short-term needs. Most of Wonolo's clients are in the retail, e-commerce, consumer packaged goods and third-party logistics industries, said AJ Brustein, Wonolo's co-founder and chief operating officer.

An employer's first posting with Wonolo is often to find workers to meet an unpredicted need.

"It might be that orders on a company's e-commerce site have spiked 20 percent over forecast, and it needs 30 additional workers ASAP," he said.

In that situation the company can post its jobs—including skills required, pay level and when workers are needed—and in many cases the jobs are filled quickly, Brustein said.

Wonolo puts little stock in standard methods of screening hourly job candidates, he added. "Unlike most traditional staffing firms, we don't require workers to submit a resume or participate in an interview," he said. "We find that process has little correlation to whether someone can do a great job in a warehouse, for example. If candidates demonstrate the five P's on the job—prepared, professional, positive, polite and punctual—they can pick up additional shifts, with some being offered ongoing, full-time positions."

All jobs available on Wonolo are for one day of work, although people may be able to string together consecutive workdays. "Workers finish a day's job and get paid the next day for that work," Brustein said.

Source: SHRM.org



Back to School Time Off Tips

The coals from the Labor Day barbecues have cooled, the beach chairs have been returned to their sheds, the ice cream shops have scaled back their hours, and the white shoes have been set aside for the next nine months. Whatever the end of summer means to you, for millions of families, it signals the return to school for children in preschool through college.

This means your employees will likely need to take a few hours out of their workday occasionally to participate in their children's education. Parents' fall calendars are often packed with school events, parent-teacher conferences, and/or parent meetings—some of which will inevitably occur during their usual working hours—and any flexibility you give them to attend these events, or even volunteer in the classroom or chaperone a field trip, will be greatly appreciated.

Where it's the law

Nine states and the District of Columbia have passed laws protecting parents' rights to take small increments of time away from work to attend to school matters. They vary widely in their specifics regarding eligibility for leave, whether the time is paid or unpaid, and the amount of time available for use.

- **California Family-School Partnership Act:** Up to 40 hours each year, up to 8 hours per month
- **District of Columbia Parental Leave Act:** Up to 24 hours every 12 months
- **Illinois School Visitation Rights Act:** Up to 8 hours during any school year, but not more than 4 hours in one day
- **Louisiana School and Day Care Conference and Activities Leave Act:** Up to 16 hours per year
- **Massachusetts Small Necessities Leave Act:** Up to 24 hours every 12 months

- **Minnesota School Conference and Activities Leave:** Up to 16 hours every 12 months
- **Nevada Leave for School-Related Activities:** Up to 4 hours per school year
- **North Carolina Parental Leave:** Up to 4 hours per year
- **Rhode Island School Involvement Leave:** Up to 10 hours during any 12-month period
- **Vermont Short Term Family Leave:** Up to 24 hours in 12 months, but not more than 4 hours in any 30-day period

Even it it's not the law

It's a best practice to offer flexibility to all employees so that they can meet the obligations of daily life while still performing at their peak at work. It goes a long way toward making an employee feel good about where they work when they can see their child perform in a school play, take their dog to the vet, or accept an appliance delivery without worrying about missing a couple hours of work or needing to take a full day off.

The beginning of fall is a great time to review your established time off policies to see how you can accommodate parents and guardians who need to meet school obligations as well as giving all employees the flexibility to attend to the other small necessities of life.

In many cases, your established policies may not need to change. Depending on the needs of your workplace, your state laws, and the employee's position, this could mean allowing employees to make up a few hours of work, take an extended lunch period, shift their schedule to start earlier or later to still get a full day in, or use personal, vacation, or PTO time in small increments.

Source: ThinkHR



“Nine states and the District of Columbia have passed laws protecting parents’ rights...”





6 Books on the Future of Work That Every HR Pro Should Read

As HR professionals and organizational leaders, it seems we are increasingly bombarded with messages about disruptive innovations and the changing nature of work. While calls to prepare strategically for the "future of work" might sometimes seem over-the-top, it doesn't change the fact that we've seen tremendous shifts in the global economy (including the labor economy) and technological innovation over the past 50 years that have had significant implications for the nature of work.

So what do the next 50 years have in store for organizations and workers? How will disruptive technologies like robotics, artificial intelligence/machine learning, pharmacogenetics, quantum entanglement, virtual presence/augmented reality, 3-D printing, and blockchain (among many others) influence future labor markets?

Here are six books every HR professional and organizational leader should read to better understand these trends and the drivers influencing the shifting trajectories in the future of work.

1. [*The Future of the Professions: How Technology Will Transform the Work of Human Experts*](#) (Oxford University Press, 2017) by Richard Susskind and Daniel Susskind. *The Future of the Professions* closely examines the intersection of rapidly advancing innovative technologies and the shifting nature and transformation of work and the professions, providing theoretically grounding and ample examples of emerging technologies, organizations and work arrangements. It is intended for organizational leaders and policy practitioners of all stripes who are interested in the effects of disruptive technologies on the future of work.
2. [*The Future of Work: Robots, AI, and Automation*](#) (Brookings Institution Press, 2018) by Darrell M. West. In *The Future of Work*, West sees the U.S. and the world at a "major inflection point" where we have to grapple with the likely impact of an increasingly automated and technologically advanced society on work, education and public policy. The insights provided will be useful to those who manage others and to those who are managed in the workplace of the future.
3. [*Rise of the Robots: Technology and the Threat of a Jobless Future*](#) (Basic Books, 2016) by Martin Ford. *Rise of the Robots* is a somewhat unsettling vision of a future world dominated by artificial intelligence, machine learning and highly automated industries, where most members of the current workforce find themselves replaced by technology and machines; in other words, a jobless future. Based on recent economic and innovation trends, Ford argues that the rapid technological advancement will ultimately result in a fundamental restructuring of corporations, governments and even entire societies as middle-class jobs gradually disappear, economic mobility evaporates and wealth is increasingly concentrated among the elite super-rich.
4. [*Gigged: The End of the Job and the Future of Work*](#) (St. Martin's Press, 2018) by Sarah Kessler. *Gigged* examines the shifting psychological contract between organizations and workers, discusses trends in the organization of work, and documents the movement in recent decades away from traditional employment models and toward part-time work and contingent employment arrangements such as independent contracting and project-based "gig" work. While such work has always been a part of informal economies around the world, the trend is increasingly common in traditional organizations as well, bolstered by the success of companies like Uber and Airbnb.
5. [*The Future of Work: Attract New Talent, Build Better Leaders, and Create a Competitive Organization*](#) (Wiley, 2014) by Jacob Morgan. In *The Future of Work*, Morgan continues the argument that the world is changing at an accelerated pace. He demonstrates that the way we work today is fundamentally different from how previous generations worked (due to globalization, technological innovation and shifts in the composition of national economies) and suggests that the future of work will be drastically different from what we experience today (a shift from knowledge workers to learning workers), where employees can work anytime and anywhere and can use any devices.
6. [*Shaping the Future of Work: A Handbook for Action and a New Social Contract*](#) (MITxPress, 2017) by Thomas A. Kochan. Probably the most academic book on this list, *Shaping the Future of Work* acknowledges an increasingly digitized economy and examines the resulting shift in social contract with regard to work and the professions. Kochan provides a road map for what leaders across contexts need to do to create high-quality jobs and develop strong and successful businesses.

