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New DOL FMLA guidance on leave to care for adult children with disabilities

On January 14, 2013, the U.S. Department of Labor (DOL) released a Family and Medical Leave Act (FMLA) [Administrator Interpretation Letter No. 2013-1](#). The letter provides guidance on the impact of the Americans with Disabilities Act Amendments Act of 2008 (ADAAA) on a parent's ability to take FMLA leave to care for an adult son or daughter (18 years or older) with an existing disability or who becomes disabled during military service.

The interpretation letter outlines the requirements one must meet in order to be entitled to take leave under the FMLA to care for a son or daughter 18 years of age or older. In order for a parent to be eligible, the adult child must meet the ADAAA's definition of disability, be incapable of self-care due to a disability, have a serious health condition, and require care. The letter clarifies that the onset of the disability is irrelevant to the determination of whether the individual is considered a child for purposes of this leave.

You may recall that the ADAAA made significant changes to the definition of the term "disability." Because the FMLA regulations adopt the ADA's definition of disability, the passage of ADAAA in 2008 changed how the FMLA is administered when a parent requests leave to care for an adult child with a disability. The January 14, 2013 interpretation letter solidifies the DOL's interpretation of the ADAAA.

With the release of this interpretation, the Sedgwick team took the opportunity to review our FMLA communications, letters, forms, and training materials to ensure that our best practices align with the interpretation provided by the DOL. Below is a summary of the changes we initially made after the passing of the ADAAA in 2008, as well as additional updates we made this month after reviewing the administrator's interpretation letter:

- **Review of the ADA language currently in our best practice letters and forms:** Correspondence sent to the employees of our clients was previously updated to include the ADAAA's expanded definition of disability. Our "child over the age of 18" forms were updated to include expansive examples of major life activities, such as caring for oneself, performing manual tasks, concentrating, hearing, walking, as well as operations of major bodily functions such as the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine and reproductive functions.

- **Updates to our healthcare provider form for coverage for children 18 and over:** With the passing of the ADAAA, impairments of a major bodily function or that limit a bodily function activity were added to the definition of disability. As such, we updated our healthcare provider form to include additional questions that ask the provider about bodily impairments and bodily functions that limit the adult child's activities, as outlined by the ADAAA and the DOL interpretation.
- **Updates to checklists and training materials.** The interpretation letter lists several examples of how to apply the ADAAA's expansive definition of disability when evaluating an adult child in the course of a disability leave request. These examples clarify that the age of the child is irrelevant and that FMLA may apply when leave is requested to care for an adult child previously wounded in military service, should the injury substantially impair his/her ability to perform a major life activity. All examples and scenarios provided by the DOL are being incorporated into our reference and training checklists. In addition, while our best practices have always aligned with the ADAAA's definition of disability, an alert has been sent to our operational teams with instruction to review the principles provided in the interpretation letter to continue to ensure that we are evaluating requests to care for an adult child in line with the DOL guidance.

Sedgwick is committed to ensuring that our clients are fully compliant with the FMLA. For your reference, a copy of the DOL administrator interpretation letter is available [here](#). If you have any questions about the FMLA or the January 14, 2013 interpretation letter, please contact your Sedgwick client services representative.

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