

FMLA Pitfalls for Employers to Avoid

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Oftentimes employers navigating leave issues find it difficult to understand and navigate the various requirements of the Family and Medical Leave Act (FMLA). This post highlights frequently asked questions by employers concerning FMLA.

1. Can FMLA leave apply retroactively?

It depends. If an employer does not properly designate leave as FMLA leave, the employer may retroactively designate the leave if the employer's failure to timely designate the leave does not harm the employee. Additionally, the employer and the employee can agree to retroactively designate the leave.

2. When can an employer get a second opinion?

If an employer has a reason to doubt the validity of an medical certification in support of an employee's request for FMLA leave, an employer may require that the employee obtain a second opinion. The employer may select the doctor that will render the second opinion; however, the physician is not permitted to be employed by the employer on a regular basis. The employer must pay for the second opinion.

3. What forms are required for an employee to return to work?

No paperwork is required. Employers may require an employee to provide an anticipated return to work date. Employers may also require employees who take leave for their own serious health condition to obtain a fitness-for-duty certification before returning to work. The fitness-for-duty certification must only be related to the health condition that necessitated the FMLA leave. Employers should note that if they require a fitness-for-duty certification, they are not permitted to seek a second opinion regarding the employee's ability to return to work, and, must reinstate the employee once a fitness-for-duty certification is submitted.

Takeaway: Navigating FMLA leave issues may be multi-faceted. Employers should review their current policies and practices for compliance.

Have an FLMA-focused question not covered here? Send an email to [Tracy Armstrong](#).

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