

Certification Requirements Under the FMLA

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The Family and Medical Leave Act (“FMLA”) was signed into law in 1993 by then-president Bill Clinton. Although that makes it more than thirty years old, many of its provisions still cause confusion for employers. The medical certification requirement is one of the areas that often raises questions.

When Employers May Request Medical Certification

An employer may require that the need for leave for a serious health condition of an employee or the employee’s immediate family member be supported by a certification issued by a health care provider. The employer should request the certification within 5 days from the date the employee intends to take the leave. If the leave is unforeseen, the employer must request certification within 5 days after the leave begins.

The employer must allow the employee at least 15 calendar days to obtain the medical certification. The employer is not allowed to request medical records from the employee.

If the employer deems that the medical certification does not contain enough information to evaluate whether the employer should grant leave under the FMLA, the employer must advise the employee and provide a reasonable opportunity for the employee to cure the deficiency in the certificate. That means that employers cannot deny medical leave because of incomplete information without first asking for additional information. The employer must identify in writing the additional information necessary to make the certification complete and must allow the employee at least 7 calendar days to cure the deficiency, unless 7 days is not practicable under the circumstances despite the employee’s diligent good faith efforts.

If the employer believes that the certificate may not be valid, the employer may require a second and even a third medical opinion. Both medical opinions must be paid for by the employer. Employers should make sure they have reasonable grounds to doubt the credibility of a certification prior to seeking another medical opinion.

Contacting an Employee’s Health Care Provider

Employers often question whether they may contact an employee’s health care provider. The answer is yes, pursuant to the following conditions:

- The employee must provide the employer with an executed written authorization from the health care provider allowing the health care provider to disclose information to the employer.
- Only a human resources professional, a leave administrator, or a management official can contact an employee’s health care provider. A direct supervisor of the employee should never contact the employee’s health care provider.
- Employers may not ask the health care provider for additional information beyond that contained on the medical certification form.
- Employers cannot force an employee to allow the employer to contact the employee’s health care provider.

Employers often have questions regarding recertification of leave. The regulations allow recertification no more often than every 30 days in connection with an absence by the employee unless the serious health condition will last for more than 30 days. If the condition is anticipated to last more than 30 days, the employer must wait

to request a recertification until the specified period that the condition was anticipated to last has passed. The regulations also allow an employer to request recertification in less than 30 days if the employee requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

Employers can always request recertification after 6 months and request a new medical certification each leave year.

Employers should also be aware that there may be other state laws, including state leave laws, that have additional or different requirements for medical provider certifications.

TAKEAWAY: Employers should ensure that those employees who manage FMLA leave are familiar with the regulations regarding health care certifications. If not, the employer should invest in training to make sure that they are compliant with regulations. If not, it could result in a claim for "interference" with an employee's rights under the FMLA. If you have questions on the FMLA, or any other employment law, please contact [Stephanie Gironda](#) or any member of the Wilentz [Employment Law](#) Team.

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