

THE INSIDE PERSPECTIVE

LABOR AND EMPLOYMENT LAW SOLUTIONS FOR EXECUTIVES AND HR PROFESSIONALS



SMITH MOORE LLP
ATTORNEYS AT LAW

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Medical Leave Under the FMLA – Who and What Can You Ask?

An employee notifies you that he will be out of work because of an illness or injury. You have more questions than answers. Does the condition qualify as a “serious health condition” under the Family and Medical Leave Act (“FMLA”)? When did it commence? How long will the employee be out of work? Will he return? May I contact the employee’s doctor to answer these questions? Remember:

- An employer may ask its employee questions necessary to determine whether or not the leave is for an FMLA-qualifying reason.
- An employer may require an employee to provide a completed medical certification from a health care provider. The regulations allow the employee at least 15 calendar days to return the certification form.
- If the requested medical certification is returned but is not fully completed, the employer should return the incomplete certification to the employee and require that it be completed.
- If the employer still has questions, a health care provider representing the employer may contact the employee’s health care provider in order to *clarify* any issues and/or authenticate the certification – as long as the employee has given permission for this inquiry. The employer may not, however, directly contact the employee’s health care provider.
- If the employer has reason to doubt the *validity* of the medical certification, it may require a second opinion from a health care provider who is designated – but not employed – by the employer, at the employer’s expense.
- An employer may require the employee to provide a recertification of the serious health condition if the employee is still absent when the original certification expires. Recertification may be requested no more often than every 30 days, unless circumstances have significantly changed or the employer has received information that casts doubt upon the validity of the employee’s stated reason for the absence.
- An employer may ask the employee on leave whether he intends to return to work at the end of the leave. If the answer is unequivocally “no,” (best to get this in writing) the employer may terminate the FMLA leave status.

TIP

The United States Department of Labor website, located at www.dol.gov, is a good source for FMLA forms, including the WH-380 medical certification form and the “Your Rights” poster.



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