



**WAGE AND HOUR DIVISION**  
UNITED STATES DEPARTMENT OF LABOR

# Fact Sheet #28G: Medical Certification under the Family and Medical Leave Act

**March 2023**

The Family and Medical Leave Act (FMLA) provides job-protected leave from work for family and medical reasons.

This fact sheet explains the medical certification process when an employee requests leave for their own or a family member's serious health condition, if requested by the employer.

## ABOUT THE FMLA

The FMLA provides eligible employees of covered employers with job-protected leave for qualifying family and medical reasons and requires continuation of their group health benefits under the same conditions as if they had not taken leave. FMLA leave may be unpaid or used at the same time as employer-provided paid leave. Employees must be restored to the same or virtually identical position when they return to work after FMLA leave.

**Eligible employees:** Employees are eligible if they:

- Work for a covered employer for at least 12 months,
- Have at least 1,250 hours of service with the employer during the 12 months before their FMLA leave starts, and
- Work at a location where the employer has at least 50 employees within 75 miles.

**Covered employers:** Covered employers under the FMLA include:

- Private-sector employers who employ 50 or more employees in 20 or more workweeks in either the current calendar year or previous calendar year,
- Public agencies, (including Federal, State, and local government employers, regardless of the number of employees, and
- Local educational agencies (including public school boards, public elementary and secondary schools, and private elementary and secondary schools, regardless of the number of employees).

**The FMLA protects** leave for:

- The birth of a child or placement of a child with the employee for adoption or foster care,
- The care for a child, spouse, or parent who has a serious health condition,
- A serious health condition that makes the employee unable to work, and
- Reasons related to a family member's service in the military, including
  - Qualifying exigency leave –leave for certain reasons related to a family member's foreign deployment, and
  - Military caregiver leave – leave when a family member is a current servicemember or recent veteran with a serious injury or illness.

For more information about the FMLA generally, see [Fact Sheet #28](#).

# CERTIFYING A SERIOUS HEALTH CONDITION

The FMLA defines a serious health condition as an illness, injury, impairment, or physical or mental condition that involves either inpatient care or continuing treatment by a health care provider. An FMLA serious health condition generally involves a period of incapacity. Incapacity means an individual is unable to work, attend school, or perform other regular daily activities because of the serious health condition, due to treatment of it, or for recovery from the condition. For more information about the definition of a serious health condition, see [Fact Sheet #28P](#).

An employee may be required by the employer to submit a certification from a health care provider to support the need for FMLA leave to care for a covered family member with a serious health condition or for the employee's own serious health condition. The employee cannot be required to provide a certification for leave to bond with a newborn child or a child placed for adoption or foster care.

**Content.** The employer may require an employee to obtain a certification that includes the following information:

- Contact information for the certifying health care provider,
- The date the serious health condition began and how long it will last,
- Appropriate medical facts about the condition such as symptoms, hospitalization, or doctor's visits,
- For leave for the employee's own serious health condition, information showing that the employee cannot perform the essential functions of the job,
- For leave to care for a family member, a statement establishing the family member needs care, and an estimate of when and how long the leave is needed, or
- For leave that needs to be taken in short blocks of time, an estimate of how much time will be needed for each absence, how often absences may occur, and information establishing the medical necessity for taking such intermittent leave.

The certification should not contain information about genetic tests, genetic services, or evidence of disease among the employee's family members. The health care provider may, but is not required to, provide a diagnosis.

**Certification by a health care provider.** Under the FMLA a health care provider includes:

- A doctor of medicine or osteopathy authorized to practice medicine or surgery in the state in which they practice,
- A podiatrist, dentist, clinical psychologist, optometrist, or chiropractor -with limitations- authorized to practice in the state and performing within the scope of their practice,
- A nurse practitioner, nurse-midwife, clinical social worker, or physician assistant authorized to practice in the state performing within the scope of their practice,
- A Christian Science practitioner listed with the First Church of Christ, Scientist, in Boston, Massachusetts, or
- Any health care provider from whom the employer or the employer's group health plan's benefits manager will accept a medical certification to substantiate a claim for benefits.

If the employee or the employee's family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the employer must accept a medical certification, including second and third opinions, from a health care provider who practices in that country. If a medical certification by a foreign health care provider is not in English, the employee may be required to provide a written translation of the certification.

**Responsibility and timing.** The employee must be notified each time a certification is required. Notice of the certification requirement must be included in the written notice of FMLA rights and responsibilities given to the employee when leave is first requested. The employer may request that the employee provide certification at a later date if the employer questions the appropriateness of the leave or its duration.

**When the deadline is not met.** Generally, the employee must provide the requested certification to the employer within 15 calendar days after the employer's request. If an employee fails to return the certification in a timely manner, the employer can deny FMLA protections for the leave following the expiration of the 15-calendar day period until a complete and sufficient certification is provided. However, the leave taken during 15-day period and the period of absence beginning the day the complete certification was received is FMLA-protected leave.

When an employee makes diligent, good faith efforts but is still unable to meet the deadline for submission – at least 15-calendar days from the request – the employee is entitled to additional time to provide the certification. In this circumstance, the employer may not deny the leave for the period that the certification was late.

The employer may allow longer than 15 calendar days for certification. In all cases, if the employee never produces the certification, the leave is not FMLA-protected leave.

*Examples:*

- Denise’s employer gives her 15 calendar days to provide a certification. She does not provide certification until 30 calendar days after her employer requests it. She says she did not reach out to her health care provider earlier because she was busy. Denise’s employer may deny FMLA protections for leave taken on days 16 through day 30, but not for leave that occurred on days 1 – 15 or leave on day 31 and after.
- LaDonna’s employer gives her 15 calendar days to provide a certification. After 10 calendar days, she advises her employer that she has contacted her health care provider for certification, but the health care provider will be unavailable to complete the certification for an additional 7 days. LaDonna returns a complete and sufficient certification on the 18th day after the employer’s request. LaDonna’s leave during all of the 18 days and the days that follow are FMLA-protected.

**Complete and sufficient certification.** If the employer requests a medical certification, the employee is responsible for providing a complete and sufficient certification, including paying for the cost of the certification and making sure the certification is provided to the employer on time. The employee must be given at least 15 calendar days after the employer’s request to provide the certification and the employee is expected to make a diligent, good faith effort to meet the timing requirement.

A certification is considered incomplete if one or more of the applicable entries on the form have not been completed. A certification is considered insufficient if the information provided is vague, unclear, or non-responsive.

An employee who receives a written notice from the employer stating that the certification is incomplete or insufficient and stating what additional information is necessary must provide the additional information to the employer within seven calendar days in most circumstances.

*Examples:*

- Trey needs FMLA leave to care for his spouse who is undergoing planned treatment for a serious health condition. At his employer’s request, he provides a medical certification completed by his spouse’s health care provider. The employer returns the certification as incomplete because the health care provider did not include his spouse’s planned treatment dates. Trey must provide the employer with information from the health care provider regarding his spouse’s planned treatment dates to make the certification complete and sufficient.
- Xochitl takes FMLA leave to recover after a surgery. The employer returns certification documents provided by Xochitl’s health care provider and asks whether Xochitl is still taking pain medication after a previous injury unrelated to the surgery. Xochitl does not need to provide information about the previous condition to receive approval to take FMLA leave for recovery from surgery. The employer cannot deny her leave for not providing this information.

**Annual certification.** If the employee’s need for FMLA leave lasts beyond a single FMLA leave year, the employee may be required to provide a new medical certification in each new FMLA leave year.

**Certification forms.** The FMLA does not require the use of any specific certification form. The Department has developed optional forms that can be used for leave for an employee’s own serious health condition (WH-380-E) or to care for a family member’s serious health condition (WH-380-F). If an employer chooses to use its own forms, it may not require any additional information beyond what is specified in the FMLA and its regulations.

Employers must accept a complete and sufficient medical certification, regardless of the format.

The employee may be required to provide information requested on the certification form only about the serious health condition which has caused the employee’s need for leave.

## AFTER THE CERTIFICATION IS COMPLETED

**Authentication and clarification.** The employer may not request additional information from the health care provider after receiving a complete and sufficient certification. Under the FMLA, the employer's direct supervisor may never contact the employee's health care provider. However, the employer may contact the health care provider to authenticate or to clarify a certification using a:

- Human resource professional,
- Leave administrator,
- Management official, or
- Another health care provider.

For example, the employer's appropriate representative could ask a health care provider whether the information contained on the form was completed or authorized by them. The representative might also ask questions to clarify the handwriting on the form or the meaning of a response.

**Second and third opinions.** The employee may be required to get a second medical certification if the employer has reason to doubt the validity of a complete and sufficient certification. The employer can choose the health care provider to provide the second opinion, but generally may not select a health care provider who it employs or contracts with on a regular basis. If the second opinion is different from the original certification, the employer may require the employee to get a third certification from a health care provider selected by both the employee and employer. The opinion of the third health care provider is final and must be used by the employer. The employer is responsible for paying for the second and third opinions, including any reasonable travel expenses for the employee or family member. The employee is provisionally entitled to FMLA leave while waiting for the second or third opinion.

**Recertification.** In general, the employer may require an employee to provide a recertification of a serious health condition, but no more often than every 30 days and only in connection with an absence. If a certification indicates that the minimum duration of the serious health condition is more than 30 days, the employer must generally wait until that minimum duration expires before requesting recertification. However, in all cases, including those where the condition may be indefinite, the employer may request a recertification for absences every six months. The employer may request a recertification in less than 30 days only if the:

- Employee requests an extension of leave,
- Circumstances described by the previous certification have changed significantly, or
- Employer receives information that causes it to doubt the employee's stated reason for the absence or the continuing validity of the existing medical certification.

In general, the employer may require the same information in a recertification as that permitted in the original medical certification. However, an employer may provide the health care provider with a record of the employee's absences and ask if the serious health condition and need for leave is consistent with the leave pattern. The employee is responsible for paying for the cost of a recertification. The employee cannot be required to undergo a second or third opinion for a recertification. In most circumstances, the employee must be provided at least 15 calendar days to provide the recertification after the employer's request.

**Returning to work.** An employee may be required to provide the employer with a "fitness-for-duty," certification from the employee's health care provider showing that the employee is able to resume work, if the employer has a policy or practice that requires employees in similar job positions who take leave for similar health conditions to provide such a certification. If a "fitness-for-duty" certification will be required, the employer must provide notice of that requirement and whether the certification must address the employee's ability to perform the essential functions of their job with the FMLA designation notice.

The employee may only be required to provide a fitness-for-duty certification with regard to the particular health condition that caused the employee's need for FMLA leave. In general, a fitness-for-duty certification may not be required for each absence taken on an intermittent or reduced leave schedule. However, the employee may be required to provide a fitness-for-duty certification up to once every 30 days if the employer has a reasonable belief that the employee's return to work presents a significant risk of harm to the employee or to others.

The employee's return to work may be delayed until the fitness-for-duty certification is provided if the employer has provided the required notice regarding any fitness-for-duty certification requirement. An employer may contact an employee's health care provider to clarify or authenticate a fitness-for-duty certification but cannot delay the employee's return to work while making that contact. An employer may not require second or third opinions for a fitness-for-duty certification. The employee is responsible for paying any cost of obtaining the fitness-for-duty certification. If State or local law or collective bargaining agreement governs an employee's return to work, those provisions must be applied.

## ADDITIONAL INFORMATION

Certification may also be requested for military family leave reasons. For more information about certification requirements for military family leave, see [Fact Sheet #28M\(c\)](#); [Fact Sheet #28M\(a\)](#); and [Fact Sheet #28M\(b\)](#).

The employer may not request a certification for leave to bond with a newborn child or a child placed for adoption or foster care. However, employers may request documentation to confirm the family relationship.

### Confidentiality of Records

Covered employers are required to maintain records and documents relating to FMLA medical certifications and recertifications of employees or their family members as confidential medical records. Such records are to be maintained in separate files from the usual personnel files. An employer must maintain records in conformance with the confidentiality requirements of the Americans with Disabilities Act (ADA), as amended, if applicable, and the Genetic Information Nondiscrimination Act, if applicable.

## ADDITIONAL PROTECTIONS

### State Laws

Some States have their own family and medical leave laws. Nothing in the FMLA prevents employees from receiving protections under other laws. Workers have the right to benefit from all the laws that apply.

### Protection from Retaliation

The FMLA is a federal worker protection law. Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA. For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin 2022-2](#).

### Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations in pursuit of direct lawsuits regarding leave for their own serious health conditions. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

## Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website:

<http://www.dol.gov/agencies/whd> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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