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## Managing Intermittent Leave Requests Pregnancy and at Other Times

There have been some recent court cases showing that there may be medical qualifications which require an employer to give an employee intermittent FMLA leave before the birth of a child for reasons related to the health of the pregnant female.

In *La Brousse v. Caribbean Airmail*, No. 09-23529, the court found that a compliance analyst for an airmail company who became pregnant with a high risk pregnancy was entitled to a reduced part time work schedule due to her medical condition. This leave was also “intermittent” and the court found that such irregular leave might also be medically necessary under the FMLA.

### What This Means For Counties

The time to avoid difficulties with managing part-time or intermittent time off is the time of the initial request. In order avoid questions about the administration of FMLA leave for workers, take the following preventative steps and implement them for all leave requests regardless of the claimed health conditions.

- Allow time off for medically required or necessary pre-natal medical appointments or other appointments under your sick leave policy to start and request them to return the FMLA forms after a third day’s missed work.
- If they don’t return the forms, if you reasonably know they are missing for a health or pregnancy related condition, hand them the forms that YOU have filled out and tell them that you will put them on leave, but they have the chance to return the forms for more clarification.

If you get a doctor’s recommendation with the FMLA forms, take these steps.

- Review the request to see that it meets the FMLA details for authorization. Note any facts that are missing that might support the request.
- Review the medical statement to see that the specifics meet the details of FMLA authorization for part time or intermittent leave.
- Review the written reporting, absence and call in rules with the employee at the time FMLA is authorized. Authorize leave in the shortest time frames possible for closer management: 30 days is usual.
- If the medical authorization does not include sufficient facts or does not “fit” the requested leave parameters (time, frequency, predictability, etc.) then make a request for a second opinion. This second opinion request can include sending the employee back for additional medical detail from the original doctor.
- If the request for additional detail (second opinion) is ignored or not responsive, you can deny the request after two weeks.
- If the second opinion still does not clarify the uncertainties, you can ask for a third tie-breaking opinion from a doctor of your own designation.

If you get the medical certification you need, meet with the employee and outline the leave parameters and the reporting requirements in writing. Then, follow through on enforcing your county’s daily absence call-in process. Provide written notice of the need to renew medical certification before the 30 days is up.

For more information, contact CTSI at 303-861-0507.