

## DOL clarifies Friday/Monday absence pattern rules

The Family and Medical Leave Act (FMLA) was designed to grant eligible employees up to a total of 12 work weeks of unpaid leave during any 12 month period. Reasons that make the employee eligible are:

- For the birth and care of the newborn child of the employee.
- For placement with the employee of a son or daughter for adoption or foster care.
- To care for an immediate family member (spouse, child, or parent) with a serious health condition.
- To take medical leave when the employee is unable to work because of a serious health condition.

The FMLA's intermittent absence rules have opened the possibility of abuse for employees who want a long weekend and follow a Friday/Monday absence pattern.

The Department of Labor (DOL) has issued an opinion letter that offers guidance for employers in this situation. The letter covers the following:

### **1. Minimum recertification period when no minimum duration of incapacity is specified in the medical certification.**

When no minimum duration of incapacity is specified in the medical certification and the recertification is done only in connection with an absence, the employer may request recertification every 30 days. It may be requested more frequently than 30 days if medical or

leave use circumstances have changed significantly or the employer receives information which casts doubt upon the continuing validity of the certification.

### **2. Minimum recertification period with Friday/Monday absence pattern.**

A pattern of Friday/Monday absences qualifies as "information that casts doubt upon the employee's stated reason for the absence" which allows employers to request recertification more frequently than every 30 days. It is only allowed as long as there is no evidence of a medical reason for the timing of the absence and the request for recertification is made in conjunction with an absence.

### **3. Informing medical provider of pattern of Friday/Monday or apparent excessive absences and asking for clarification.**

When requesting medical certification or recertification, the employer may ask the doctor about expected medical appointment scheduling issues. An employers direct contact with the health care provider is prohibited, but the employer can add this question to the medical certification form. The employer can ask, as a part of the recertification process, whether the likely duration and frequency of the employee's incapacity due to the chronic condition is limited to Mondays and Fridays and can ask for the reason why this is the case.

DOL opinion letters can only be used by the company that requested them and are provided as general information. CTSI recommends that counties work with their legal counsel to develop their own policies regarding Friday/Monday absence patterns. For more information, contact CTSI at 303-861-0507.

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### **County Technical Services, Inc.**