

Rules to follow for FMLA return-to-work certifications

Under the Family and Medical Leave Act (FMLA), employers must follow certain procedures when an employee returns from FMLA leave. According to the FMLA, employers don't need to require their employees to submit a return-to-work certification when they are returning to work after FMLA leave; however, CTSI highly recommends this practice.

When an employer requires a certificate

If the employer requires a return-to-work certification, the requirement must be uniformly applied. If the employee has taken intermittent leave, the employer cannot require such a certification, but they can require a doctor's update every thirty days.

If the employee fails to provide a required certification, an employer can delay the employee's return to work until the employee submits it. The certification can be a simple statement of the employee's ability to work and it must relate only to the particular health condition(s) related to FMLA leave.

Timely notice

The employer should provide timely notice of any obligations regarding return-to-work certification. The U.S. Department of Labor (DOL) rules state that the employer must notify employees in writing of their obligations, and the consequences if they fail to meet the obligations in a reasonable amount of time.

This can most easily be done by issuing a letter at the beginning of the leave, setting out FMLA rights and employee obligations with specific timelines for compliance. The return-to-work date can also be estimated at a specified FMLA leave usage rate, whether the leave is intermittent or full time.

If the employer fails to give timely notice and the employee's reinstatement is delayed as a result, the lack of notice may be a violation of the employee's statutory right to reinstatement. In such a situation, the employer can't count the additional time against the employee's FMLA leave entitlement or penalize the employee for being absent.

Health care providers employed by the employer

With the employee's permission, a health care provider employed by the employer may contact the employee's health care provider to verify the employee's fitness to return to work. No additional information may be acquired and the employer may not delay the employee's return to work while that contact is being made.

Cost of the certification

If a doctor charges a fee for the certification, DOL regulations state that, "the cost of the certification shall be borne by the employee, and the employee is not entitled to be paid for the time or travel costs spent in acquiring the certification (29 C.F.R. §825.310(d))."

Above all, adopt a uniformly applied policy regarding required return-to-work certifications.

For more information, visit the DOL's website at www.dol.gov or contact CTSI at 303-861-0507.

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