

Recertification in Cases of Long-Term, Intermittent, Reduced Schedule Leave

When may an employee on intermittent leave be subject to recertification for a long-term health condition?

The Department of Labor's (DOL) regulations under the Family and Medical Leave Act (FMLA) statute provide that an employer may require subsequent recertification only "on a reasonable basis."

Section 825.308 of the Agency's rules describes the circumstances under which employers are free to request recertification of serious health conditions that previously have been the subject of submissions from health care providers. Subsection (a) of that portion of the regulations describes the ability to request recertification in the case of pregnancies or in circumstances involving chronic or permanent/long-term conditions. Such requests generally can be made no more frequently than once every 30 days, unless the circumstances described by the previous certification have changed significantly or the employer receives information that casts doubt upon the stated reason for the absence.

In situations in which the period of incapacity described by the health care provider is more than 30 days, the employer is barred from requesting recertification until that minimum period first specified by the health care provider passes, unless:

- 1) the employee requests an extension of leave;
- 2) the circumstances described by the previous certification have changed significantly; or
- 3) the employer receives information that casts doubt on the continuing validity of the certification.

Moreover, where leave of any duration is taken on an intermittent or reduced schedule basis, those same limitations apply.

What This Means For Counties

In most situations intermittent leave is not predictable. Therefore, when considering recertification in situations in which a county employee requests leave of any duration, managers will want to make sure the employee fits the criteria described in the DOL regulations. The supervisors should also record any information that comes to their attention which may cast doubt on the validity of the certification.

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