

# FAQs About FMLA Certification: You Ask, We Answer

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Employers face many challenges when dealing with claims under the Family and Medical Leave Act (FMLA), including the initial determination of whether the leave is covered by the FMLA. Many illnesses and injuries qualify as a “serious health condition,” thus entitling an employee to covered leave. However, many injuries and illnesses do not. The first step in making this determination is to request a certification.

Below are ten of the most common questions and answers with respect to FMLA certifications:

### 1. When Should You Request a Medical Certification?

If you are unsure whether an alleged medical condition is covered by the FMLA, you may request a medical certification from your employees. However, any requests for a certification should be made when you first learn of an employee’s need for leave or within five business days thereafter. If the leave is unforeseen (i.e., the employee is involved in an accident), you should request a certification within five business days after the leave commences.

### 2. Do You Have to Use the Certification Forms Provided by the Department of Labor (DOL)?

No, but you cannot request more information than what is already set forth in the DOL’s forms. To ensure that you are in compliance with the FMLA, use the certification forms provided by the DOL, available [here](#). Remember to use form WH-380-E for certification of an employee’s own serious health condition and form WH-380-F for certification of a family member’s serious health condition.

### 3. How Long Does An Employee Have to Provide the Certification?

Employees must be allowed at least fifteen (15) calendar days from the date of the initial request to provide a medical certification, unless the circumstances require additional time. The DOL has advised employers to “be mindful that employees must rely on the cooperation of their health care providers and other third parties in

submitting the certification and that employees should not be penalized for delays over which they have no control.”

#### **4. What Can You Do If an Employee Returns a Certification That Is Incomplete or Non-Responsive?**

A certification is “incomplete” if an entry on the certification form is left blank. A certification is “insufficient” if the information provided is vague, ambiguous, or non-responsive. You should notify employees in writing as soon as possible after receiving a certification that you believe is incomplete or insufficient. Employees must be given seven (7) calendar days (unless the circumstances require additional time) to cure deficiencies if their certification is incomplete or insufficient. You must advise the employee of the consequences of failing to provide adequate certification, including the denial of FMLA leave until the required certification is provided.

#### **5. When Can You Request Additional Information from an Employee’s Health Care Provider?**

If you receive a certification that is incomplete or insufficient, you cannot contact an employee’s health care provider. Instead, you must give the employee the opportunity to cure the deficiencies, as discussed in Number 4 above. Once you have received a complete and sufficient certification from an employee, you may request additional information from an employee’s health care provider, but only under two circumstances:

1. Authentication. You may ask a health care provider to “authenticate” the certification by requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document.
2. Clarification. If you can’t read the handwriting on a certification or you don’t understand the meaning of a response, you may request a “clarification” from the health care provider. However, you cannot request information beyond that required by the certification form.

#### **6. Who Can Contact the Employee’s Health Care Provider?**

Be careful with this one! Contacting an employee’s health care provider can be a hazardous venture (even when done properly) because of the risk that information beyond what is required by the certification form may be disclosed. Also, the employee’s supervisor cannot be the one to make the call. The only individuals who may contact an employee’s health care provider are (1) a health care provider hired by the employer; (2) a human resources professional; (3) a leave administrator; or (4) a management official (other than the supervisor). If possible, try to use an individual that will not be involved in the decision-making process and remember to keep

the conversation limited to the information that was previously contained in the certification form.

## **7. What Can You Do If an Employee Fails to Provide a Certification?**

You may deny the employee's request for leave. A certification that is not returned to the employer is not considered incomplete or insufficient, but constitutes a failure to provide certification. An employee who fails to return a certification has no right to cure. In addition, you are not required to provide the employee with notice when a certification is not received. This doesn't mean that you should deny an employee's request for FMLA leave as soon as the fifteen-day period for providing the certification expires. If you have reason to believe that the employee is acting diligently and in good faith to obtain the certification, but it is simply taking longer than expected, be flexible on the timing requirement before deciding to deny leave.

## **8. Can You Obtain a Second Opinion?**

Yes. If you have reason to doubt the validity of a certification, you may require the employee to obtain a second opinion at your expense. You may choose the health care provider, but it cannot be one that is regularly used by your company. If the second opinion does not establish the employee's entitlement to FMLA leave, the leave should not be designated as FMLA leave and may be treated as paid or unpaid leave under your established leave policies. Also, if the employee fails to cooperate with the request for a second opinion (i.e., if the employee fails to authorize his or her health care provider to release all relevant medical information pertaining to the serious health condition), leave may be denied. If necessary, you may obtain a third opinion, however, the regulations provide that this opinion shall be "final and binding."

## **9. Can You Request a Recertification to Determine if Leave is Still Necessary?**

Yes. As a general rule, you may request recertification no more than once every thirty days. If a certification indicates that the minimum duration of the condition will last more than thirty days, however, you must wait until that minimum duration expires before requesting a recertification. For instance, if you learn that an employee will need sixty days to recover from knee replacement surgery, you cannot request a recertification after only thirty days. You should wait the full sixty days.

There are some circumstances in which you may request recertification in less than thirty days. For example, if you receive information that casts doubt upon the employee's reason for the absence, or the continuing validity of his or her absence, you may request a recertification at any time.

## 10. Can You Require a Certification for Non-Medical Leave?

Yes. Remember that the FMLA now allows certain military personnel to take leave for “any qualifying exigency,” which could be entirely unrelated to an employee’s medical condition. You may require an employee to provide a copy of his or her active duty orders or other documentation issued by the military. A copy of this form is available [here](#).

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