

Medical Certification for the FMLA and ADA

If you request a reasonable accommodation under the Americans with Disabilities Act (ADA) or job-protected leave under the Family and Medical Leave Act (FMLA), you may need to provide medical certification to show that you have a qualifying medical condition. The following information is a guide to help you to understand the different medical certification requirements under the ADA and FMLA.

| | <u>Family and Medical Leave Act (FMLA)</u> | <u>Americans with Disabilities Act (ADA)</u> |
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| When can an employer require medical certification from an employee? | Anytime FMLA leave is requested | When an employee requests a reasonable accommodation and the need for accommodation or disability is not obvious or known |
| What documentation may an employer require? | <ul style="list-style-type: none"> Name, address, telephone number, and fax number of the health care provider Health care provider's type of practice or specialization Approximate date the serious health condition began and how long it will probably last Description of the condition sufficient to support the need for FMLA leave. (May include information on symptoms, diagnosis, hospitalizations, doctor visits, prescribed medications, referrals, and regimens of continuing treatment) | <p>Employer may require employee to provide sufficient documentation to show that s/he has a disability under the ADA and needs the requested accommodation. The documentation is sufficient if it describes:</p> <ul style="list-style-type: none"> the nature, severity, and duration of employee's impairment, the activity or activities that the impairment limits the extent to which the impairment limits the employee's ability to perform the activity or activities, and shows why a reasonable accommodation is needed |
| | <u>Family and Medical Leave Act (FMLA)</u> | <u>Americans with Disabilities Act (ADA)</u> |

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| <p>Does the employee have to disclose a specific diagnosis?</p> | <p>NO, so long as documentation establishes a serious health condition sufficient to support the need for FMLA leave</p> | <p>NO, so long as documentation establishes the employee has a disability under the ADA and needs a reasonable accommodation</p> |
| <p>Can an employer ask for complete medical records?</p> | <p>NO</p> | <p>NO</p> |
| <p>Is there a limitation on information included in certification?</p> | <p>YES, information in the certification must relate only to the serious health condition giving rise to the need for leave</p> | <p>YES, information must relate to the disability at issue and the need for accommodation</p> |
| <p>If employee does not provide the requested documentation, can s/he be denied leave?</p> | <p>YES</p> | <p>YES</p> |
| <p>What type of health care professional can provide certification?</p> | <p>Doctors, psychologists, dentists, optometrists, chiropractors, nurse practitioners, nurse-midwives, physicians assistants, and clinical social workers</p> | <p>Doctors, psychologists, nurses, physical therapists, occupational therapists, speech therapists, vocational rehabilitation specialists, and licensed mental health professionals</p> |
| <p>Who chooses the initial health care professional to provide certification?</p> | <p>Employee</p> | <p>Employee</p> |
| <p>Can the employer verify the certification by contacting the health care professional?</p> | <p>YES, but only to clarify handwriting, ensure it is not a forgery, etc. Employers can't ask for information beyond that on the certification form.</p> | <p>MAYBE, some case law suggests that employers cannot contact an employee's health care professional directly without employee permission.</p> |
| | <p><u>Family and Medical Leave Act (FMLA)</u></p> | <p><u>Americans with Disabilities Act (ADA)</u></p> |

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| <p>Can the employer ask the employee to get a second opinion?</p> | <p>YES, an employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion <i>at the employer's expense</i>. The employer is allowed to choose the provider, but it can't be someone the employer regularly contracts with. If the opinions differ, the employee can obtain a third opinion from a mutually agreed upon provider. That third opinion is final and binding.</p> | <p>YES, if the certification is not credible or the employee fails to correct deficiencies, the employer can require the employee to go to a health care provider of its choice. But any further medical examination must be limited to determining the existence of a disability and the functional limitations that require reasonable accommodation. The employer is responsible for paying all costs associated with sending the employee to another health care provider.</p> |
| <p>What can the employer do if the employee's certification is insufficient or incomplete?</p> | <p>If employee's documentation is insufficient, the employer first has to explain why then give the employee 7 days to fix the certification.</p> | <p>If documentation is insufficient, the employer should first explain why, then allow the employee to provide the information within a reasonable time.</p> |
| <p>How often can an employer ask for an employee to get recertified?</p> | <p>An employer may require an employee who is on leave to provide recertification by a health care provider no more than every 30 days--but if the initial certification mentioned a specific minimum duration for the condition, the employer can't ask the employee to recertify until that time frame has ended. The employer must give the employee at least 15 days to respond to the request for recertification.</p> | <p>If the employee did not specify a fairly specific return date or has asked for a continuation of leave, the employer may require the employee to provide periodic updates on his/her condition and possible date of return.</p> |

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