

What Am I Doing Wrong?? Common FMLA Mistakes: Not Properly Considering When a Medical Recertification Can be Requested

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“What did I do wrong?” and *“Am I doing this correctly?”* are frequent questions from clients regarding FMLA administration. This is the eleventh in a series highlighting some of the more common mistakes employers can inadvertently make regarding FMLA administration.

Not properly considering when a medical recertification can, and should, be requested when an employee exceeds the anticipated frequency and/or duration of leave.

A frequent concern in administering FMLA leave is when employees exceed the estimated frequency and/or duration identified on the employee’s medical certification. The FMLA regulations provide, in part, that an employer may request medical recertification:

- no more frequently than every 30 days and only in connection with an absence;
- after the minimum duration of the condition expires, if the medical certification indicates the minimum duration of the condition is more than 30 days.

An employer may request recertification more frequently, however, if: 1) the circumstances described by the previous certification have changed significantly (e.g., the duration or frequency of the absence, the nature or severity of the illness, complications); or 2) the employer receives information that casts doubt upon the employee’s stated reason for the absence or the continuing validity of the certification.

In *Norris v. Allison Transmission, Inc.*, No. 1:13-cv-01287-SEB-DML, 2015 U.S. Dist. LEXIS 10936 (S.D. Ind. Jan. 30, 2015), an employee alleged that his employer interfered with his FMLA rights when he was terminated for exceeding the frequency and duration of his estimated 3-4 days per month of leave. The employee took off approximately 15 days in one month. The employer requested recertification because the employee exceeded his approved frequency and duration of leave. According to the employee, the nature of his wife’s serious health condition had changed. The employee never submitted recertification paperwork, and was terminated for being absent beyond the approved time frame of the leave. The court determined that the employer acted in accordance

with its rights under the FMLA to request recertification, and to subsequently terminate the employee based on his failure to provide the requested medical recertification.

In *Edusei v. Adventist HealthCare, Inc.*, Civil Action No. DKC 13-0157, 2014 U.S. Dist. LEXIS 91956 (D. Md. July 7, 2014), an employee brought an FMLA interference claim against her employer after she was denied a five-day extension to her four week FMLA leave to care for her ill father. The employer argued that the employee was only entitled to an extension of her FMLA leave if her father's condition worsened. The court decided that an individual's serious health condition does not need to become *more* serious for an employee to be granted an extension of leave, and if the employer had reason to question the condition of the employee's father, it should have requested recertification.

When an employee exceeds the estimated frequency and/or duration of approved FMLA leave, an employer should consider requesting a recertification before imposing any discipline. Failure to seek a recertification and instead imposing discipline in these situations may result in FMLA interference claims.

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