

## FMLA Medical Certifications – A Few Reminders To Avoid Getting Lost In The FMLA Maze

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Making your way through the FMLA regulations may often feel like weaving your way through a complicated maze. And, as with anyone facing such a maze, you're just hoping you don't get lost and find yourself at a dead end with no way to retrace your steps. Don't fret. The regulations are not as complicated as they seem. You can make your way through if you just focus on one step at a time.

- Step 1 – Providing the eligibility notice – check!
- Step 2 – Evaluating the medical certification form

Once you have a medical certification from an employee, you will need to evaluate whether the employee or his/her family member has a serious health condition. As you evaluate, you may have questions concerning the certification and wonder if you can contact the health care provider. Thankfully, the DOL's regulations governing the FMLA specify when an employer may contact an employee's health care provider if it has questions regarding a medical certification. To assess whether that right exists, however, you first need to determine what your questions are regarding the certification. Assuming the certification is complete and sufficient (see 29 CFR § 825.304(c) if you don't know), then you may want to contact the health care provider because you can't read the handwriting on the certification or you don't understand what is meant by a particular response, otherwise known as "clarification" under the FMLA regulations. Or, perhaps you simply want to verify that the health care provider actually signed the certification or authorized the form, otherwise known as "authentication" under the FMLA regulations. If you merely want to authenticate, the regulations permit you to provide the certification form to the health care provider and ask if he/she signed the form or otherwise authorized it. If, however, you need the health care provider to *clarify* an answer, then you first need to obtain a HIPAA-compliant release from the employee. If the employee refuses to provide such a release and does not otherwise clarify the certification, you can deny the leave. Whatever you do, the regulations prohibit an employer from requesting information from a health care provider beyond what is needed for the certification form. For instance, you can't obtain the complete medical records of an employee to determine if he/she qualifies for leave. And, contact with the health care provider should not be made by the employee's supervisor. Indeed, the FMLA regulations specifically prohibit this. An appropriate representative in your HR department, possibly a leave administrator, or a management official should be the one communicating with the employee's health care provider. See 29 CFR § 825.307(a). Keeping these rules in mind can help as you successfully weave your way through the certification process.

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