



Checklist: 11 steps to investigating FMLA abuse during the medical certification process

Use of the medical certification process is the biggest weapon employers have in combating FMLA abuse. It gives you the right to obtain information from the employee's physician about the ailment and, at least for the first certification, to obtain a second or third opinion from an independent physician.

- ☐ **1. Obtain a medical certification** for each request for leave due to a serious health condition. It's important that your sick leave or attendance policy requires a doctor's certification for all absences of three or more days for the leave to be excused. If there's no such requirement and you intend to require paid leave to run concurrently with FMLA leave, you might not be able to require a medical certification, which is the first step in an anti-fraud program.
- ☐ **2. Enforce a policy** denying the leave request if an employee fails to submit certification within 15 days. In each instance, assess any appropriate penalties for failure to be at work.
- ☐ **3. Examine the certification closely** to ensure it's been properly and fully completed. Many doctors will hastily complete the form. In some cases, they'll intentionally leave some sections incomplete to remain "truthful" while accommodating the desires of the patient/employee for leave.

If the medical certification is incomplete, specify in writing what information is lacking and allow the employee at least seven days to cure the deficiency. If the employee fails to do so, deny the leave request. Of course, if the medical certification doesn't support the existence of a serious health condition, you should deny the request.
- ☐ **4. Require a second opinion** if the circumstances are even slightly suspicious and it's an original certification.
- ☐ **5. Once the certification is approved**, make a limited inquiry each time the employee requests more leave, particularly in the case of intermittent leave. The goal is to determine whether the leave is for the same qualifying reason.
- ☐ **6. Watch the schedule of absences** closely in cases of intermittent leave to determine whether a suspicious pattern develops (e.g., immediately before and after weekends or days off) or whether there's a change in the frequency or timing. Such actions could suggest a change in condition that enables you to request a recertification.



- ☐ **7. Request recertifications** as often as the law allows. The frequency of recertification permitted will differ depending on the type of leave and the type of serious health condition.
- ☐ **8. Require accrued leave to run concurrently** with FMLA leave when allowed by law. When an employee realizes that taking leave today will affect future vacation time, he or she is more likely to take FMLA leave only when the need is legitimate.
- ☐ **9. Ask the physician to verify** that the medical certification is exactly as he or she signed it and has not been altered.
- ☐ **10. Inquire about the intended method of transportation** if an employee requests to leave work early because of their serious health condition. If the employee can't work, perhaps an ambulance is needed.
- ☐ **11. Aggressively pursue potential fraud** and if concrete evidence of fraud is discovered, take appropriate disciplinary action. Always follow up on reports from fellow employees or other sources that the employee does not need leave.