

Employers may request more detailed medical certification for an employee's own serious health condition under the new regulations, but information available regarding a family member's health condition is more limited. (See DOL forms) As a practical matter, consider using all of the new forms that DOL has available to support the new regulations. At least at the outset this will alleviate the need to produce new employer-specific forms, although employers can certainly create such forms at a later time if they wish (being sure never to exceed the limits that the regulations establish, e.g. permissible questions in a medical certification). It is also likely to reduce the potential for arguments with employees or their advisors, since the forms will be DOL produced.

Employers have 5 days (previously 2 days) following leave request to request medical certification.

Employees have 15 days to provide requested certification. Additional time may be granted if employee is using "diligent, good faith efforts to get the certification and lets the employer know of such efforts."

If an employee's medical certification is deficient, employer must notify employee of certification deficiencies in writing, and allow employee seven calendar days to provide additional information. If employee fails to submit a complete and sufficient certification afterwards, the employer can deny FMLA leave.

Employers may request certifications annually for conditions lasting longer than a year.

For conditions of relatively short duration, employer may request recertification every 30 days. If initial certification says absence will last longer than 30 days, recertification can be requested when the initial certification says the absence will end or six months, whichever is shorter, and in connection with an absence by the employee.

Employee must provide FMLA medical certification even when substituting paid leave for FMLA leave.

Employers can consider medical information received from employee pursuant to ADA or workers' compensation inquiries.

Direct supervisors are prohibited from obtaining an employee's medical information when an FMLA certification is needed.