

Avoid Headaches by Requiring Medical Certification for Leave

QUESTION: One of our employees, Maggie, recently had minor surgery and requested a week off to recover. Since it was only a week, her supervisor decided not to bother with the family leave paperwork and approved Maggie's time off as unpaid personal time.

Once the surgery was done, Maggie called and informed her supervisor that some unexpected complications arose and that her doctor estimates that she will need an additional three weeks off before she is able to return to work. Because of this extension of Maggie's original request for time off, we need to process her request for time off as family leave and obtain the proper medical forms.

Maggie's supervisor informed her that she would be sending the forms to her house and that Maggie needs to return the forms ASAP in order for her supervisor to authorize the leave. Maggie informed her supervisor that she would do what she could, but that she is laid up in bed and believes it will take her a few days to get the forms filled out and returned to the supervisor. We need the medical certifications before we know how to characterize the leave - how much pressure can we put on Maggie to get them back to us? Also, if her leave is extended again, is it acceptable for us to request another medical certification?

ANSWER: It is the employer's obligation to obtain enough information from the employee to determine if the leave qualifies under OFLA (the Oregon Family Leave Act) and/or FMLA (the federal Family and Medical Leave Act). Accordingly, employers may require employees who request family leave to provide medical certifications for serious health conditions. However, there are requirements the employer must satisfy to ensure the notice to employees regarding the request for medical certification is sufficient.

In circumstances when the employee is able to give at least 30 days notice of the OFLA/FMLA leave, the law allows the employer to require medical verification before the leave begins. In the much more common situation where the employee is unable to give this much notice, the law still allows the employer to require medical verification, but the employee must be given at least 15 days to provide it.

In addition, under FMLA, the employer's request for medical certification must be in writing and must advise employees of the consequences of failure to provide the requested medical certification.

As soon as the employer has enough information to determine that leave qualifies as OFLA or FMLA, the employer must notify the employee that the leave will be designated as such. In cases where the employer is waiting for the requested medical certification, the employer should provisionally designate the leave, notify the employee of the provisional designation and confirm the subsequent and final designation - or withdrawal of the designation.

In Maggie's case, you must give her at least 15 days to provide the medical verification the supervisor is now requesting. In the interim, you should provisionally designate the leave and notify Maggie that you are doing so.

As for additional medical certifications, employers may obtain updated medical opinions for leave based on pregnancy, chronic or long term conditions no more often than every 30 days. This 30 day limitation applies unless: 1) an employee requests an extension of leave; 2) the duration or nature of the condition changes significantly; or 3) the employer receives information casting doubt on the employee's reason for the absence. However, employers may not seek a second opinion on recertifications.

When an employer requires a medical certification, the employer must pay any out-of-pocket expenses or costs not covered by insurance.

QUESTION: We suspect that one of our employees, Tom, may be playing us for fools in order to take an extended fishing trip to Alaska.

Tom presented HR with a letter from his doctor indicating that he must take four weeks off of work next month in order to recover from surgery. No other details are provided. Normally such a situation would not make us suspicious, but Tom has apparently been chatting with other employees - and his supervisor has overheard - about his upcoming trip up above the Arctic Circle on a floating and camping excursion with his best friend, Gil. You see, Tom has exhausted all his vacation days and has not recently requested any additional time off. Tom's supervisor was further concerned when he received the medical note about Tom's need for a month off, in the middle of fishing season, coincidentally, signed by none other than "Dr. Gil."

May we discuss the issue with "Dr. Gil?" May we deny Tom's request for leave?

ANSWER: As discussed in the answer to the above question, it is the employer's obligation to obtain enough information from the employee to determine if the leave qualifies under OFLA and/or FMLA. Upon the employer's request, the employee must provide enough information and explanation of the need for leave for the employer to make an appropriate designation, and the leave request may be denied if the employee fails to do so. However, you should not deny Tom's request for time off until you provide him the opportunity to provide additional information.

You may not contact Dr. Gil directly to discuss the adequacy of the information in the letter you received concerning Tom's need for leave. You can have a separate health care provider contact the employee's provider to clarify the need for leave, but only with the employee's permission.

If, after obtaining additional information about Tom's need for leave, you still have questions regarding the validity of Tom's medical certification, you may request a second opinion from a health care provider. You must utilize a health care provider unrelated to

you as an employer. If the second opinion differs from Dr. Gil's opinion, a third opinion may be obtained from another provider.

For more information on this and other important information affecting Oregon employers, including seminars conducted by BOLI's Technical Assistance Unit, please visit our website at www.oregon.gov/boli/ta. You can also call us at 971-673-0824.