

EMPLOYER LAW BLOG

FMLA – Curing a Deficient Medical Certification

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~~Cox, C~~ Your employee requests Family Medical Leave and presents you with a medical certification that is deficient. What do you do?

You must advise the employee of the deficiencies in the medical certification. You must then allow an employee who has requested Family Medical Leave at least 7 days to cure the deficiencies in the medical certification.

A Pennsylvania hospital fired an employee for excessive absences after the employee sought medical leave for an unspecified medical condition. The employee began experiencing shortness of breath, nausea and vomiting. She sought intermittent Family Medical Leave based on her doctors medical certification that she needed “intermittent leave at a frequency of 2 times weekly” and lasting for a probable duration of 1 month. After submitting the medical certification, but before the hospital responded to her request, she missed 5 days of work due to her condition. Without asking for any further information about the medical certification, the hospital fired the employee for absenteeism, including the 5 days she had taken off due to her medical condition. The employee reminded the hospital that she had requested Family Medical Leave. The hospital responded by telling her, for the first time, that her request was denied because she lacked a “serious medical condition” as defined by the FMLA.

A medical certification must state –

- The date on which the serious health condition began
- The probable duration of the condition
- Relevant medical facts
- A statement the employee is unable to perform her job's functions

- The dates and duration of any planned medical treatment
- The expected duration of the intermittent leave

The employer can deny the requested leave if the medical certification is insufficient or incomplete. However, the employer must first give the employee 7 calendar days to cure any deficiencies in the medical certification.

In this case, the Court found that the medical certification was incomplete because the relevant information about her condition was not yet available when she requested leave. The Court then found that a failure of the hospital to advise the employee of the deficiencies and to permit the employee a 7 day period to remedy any deficiency in the medical certification constitutes unlawful interference under the Act.

This case presents an example a good example of an “emerging condition” or a “yet to be diagnosed condition” in which the doctor may need additional time to provide the required elements of a sufficient certification. The Court noted, “As this case illustrates, for an employee with an emerging condition, the difference between a medical certification that supports leave and one that is deficient might be a matter of days.”

Hansler v. Lehigh Valley