Fitness for Duty Tests and Other FMLA Issues
Social Services Directors’ Legal Conference
June 27, 2017

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FITNESS FOR DUTY CERTIFICATION - FMLA

One Opportunity
FITNESS FOR DUTY CERTIFICATION - FMLA

In Only One Circumstance

On the Designation Notice
FMLA FIT FOR DUTY
PERSONNEL POLICY PROVISIONS

Paradise County
Employees do not need to provide medical certification of the need for FMLA leave.
Employees returning from FMLA leave taken for surgical procedures must have a physician certify that they are fit-for-duty.

Coffee County
All employees must provide medical certification of the need for FMLA leave.
All employees returning from FMLA leave taken for their own serious health condition must have a physician certify that they are fit for duty.

TWO REQUESTS FOR FMLA LEAVE

Daria is a CPS caseworker for Paradise County
Daria requests leave for abdominal surgery.
Paradise HR hands her a Notice of Rights and Responsibilities and her Designation Notice.

Joya is a CPS caseworker for Coffee County
Joya requests leave for abdominal surgery.
Coffee HR gives Joya a Notice of Rights and Responsibilities and a medical certification to be completed by her treating physician.
Joya returns a complete and clear medical certification form.
Paradise HR gives her Designation Notice.
Daria, CPS caseworker for Paradise County

Daria requests leave for abdominal surgery.

Paradise HR hands her a Notice of Rights and Responsibilities and her Designation Notice.

Daria’s Designation Notice does not require her to return a fitness for duty certification when she returns to work even though Paradise County’s policy provides for a fit-for-duty certification in this situation.

Joya, CPS caseworker for Coffee County

Joya requests leave for abdominal surgery.

Coffee HR gives Joya a Notice of Rights and Responsibilities and a Medical Certification.

Joya returns a complete and clear Medical Certification.

Paradise HR gives her a Designation Notice.

Joya’s Designation Notice does require her to return a fitness for duty certification when she returns to work and also requires that the certification address her ability to perform her essential job duties.
Daria, CPS caseworker for Paradise County

Daria requests leave for abdominal surgery.

Paradise HR hands her a Notice of Rights and Responsibilities and her Designation Notice.

Daria’s Designation Notice does not require her to return a fitness for duty certification when she returns to work even though Paradise County’s policy provides for a fit-for-duty certification in this situation.

Joya, CPS caseworker for Coffee County

Joya requests leave for abdominal surgery.

Coffee HR gives Joya a Notice of Rights and Responsibilities and a medical certification to be completed by her treating physician.

Joya returns a complete and clear medical certification form.

Paradise HR gives her a Designation Notice.

Joya’s Designation Notice does require her to return a fitness for duty certification when she returns to work and also requires that the certification address her ability to perform her essential job duties.
LIST OF ESSENTIAL DUTIES

1. Assess information from reports made by phone, email, fax, or in person to determine whether the report constitutes alleged child maltreatment as defined by the state and federal government.

2. Investigate alleged abuse, neglect, or dependency or other maltreatment.

3. Recommend agency actions and implement agency decisions regarding suitable care for children in and out of their homes.

4. Provide direct social work services to families in which abuse or neglect has been reported in order to protect children from further harm.

5. Responsible for assessment and crisis intervention for assigned on-call nights and weekends. This may involve getting little or no sleep.

6. Majority of work in field and involves regular driving.

7. Physically carries children to and transports them in personal vehicle.

Daria, CPS caseworker for Paradise County

Daria requests leave for abdominal surgery.

Daria’s Designation Notice does not require her to return a fitness for duty certification when she returns to work even though Paradise County’s policy provides for a fit-for-duty certification in this situation.

Daria returns from FMLA leave. HR tells Daria that she cannot return until her physician completes a fit-for-duty certification.

Joya, CPS caseworker for Coffee County

Joya requests leave for abdominal surgery.

Joya’s Designation Notice requires her to return a fitness for duty certification when she returns to work and also requires that the certification address her ability to perform her essential job duties.

Joya returns from FMLA leave and turns in a letter that certifies her as fit for duty generally but does not address her essential job duties.
CORRECT RESPONSES

Paradise  Daria
Paradise County must allow Daria to return to work immediately.

Coffee  Joya
Coffee County may tell Joya that she may not return to work until she provides a certification that addresses her ability to perform her essential job functions.

FIT FOR DUTY CERTIFICATION RULES

Same as medical certification
**COFFEE COUNTY CONTINUES TO STRUGGLE WITH JOYA**

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<thead>
<tr>
<th>Paradise → Daria</th>
<th>Coffee → Joya</th>
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<tbody>
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<td>Paradise County must allow Daria to return to work immediately.</td>
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<td>Joya now returns a new letter from her physician that leaves HR confused about her ability to lift and carry minor children when the situation requires.</td>
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**CLARIFICATION AND AUTHENTICATION**

*Same as medical certification.*
- Insufficient v. Incomplete
- Request in writing
- Seven calendar days to complete
CLARIFICATION AND AUTHENTICATION

Once the employer has given an employee an opportunity to cure and insufficiencies, it may contact the employee's health care provider to clarify and/or authenticate the fitness-for-duty certification under the same conditions as govern clarifying and authenticating a medical certification.

CLARIFICATION AND AUTHENTICATION

• Authentication v. Clarification

• Clarification may be requested only for the serious health condition for which FMLA leave was taken.
CLARIFICATION AND AUTHENTICATION

Employer may not delay employee's return to work while contact with the health care provider is being made.

CLARIFICATION AND AUTHENTICATION

No second or third opinions.
### JOYA AGAIN

**Paradise ➔ Daria**

Paradise County must allow Daria to return to work immediately.

**Coffee ➔ Joya**

Joya now returns a new letter from her physician that leaves HR confused about her ability to lift and carry minor children when the situation requires.

HR contacts Joya’s physician. Turns out that the doctor has certified her as fit-for-duty with the restriction that she cannot lift and carry minor children.

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**NOW WHAT?**
If the fit for duty certification includes restrictions, then the employer’s duty to reinstate the employee is not triggered.

MEANWHILE . . . .

Paradise → Daria
Paradise County must allow Daria to return to work immediately.

After Daria returns to work, both her supervisor and the DSS director are suspicious about her ability to physically lift and transport minors.

What can they do?

Coffee → Joya
HR contacts Joya’s physician. Turns out that the doctor has certified her as fit-for-duty with the restriction that she cannot lift and carry minor children.

HR extends Joya’s FMLA leave.
After an employee’s return to work from FMLA leave, any questions or issues related to the employee’s ability to perform essential job duties become ADA questions.

WHY DOES DARIA’S EMPLOYER THINK SHE CANNOT LIFT AND TRANSPORT MINORS?
FIT FOR DUTY EXAMS UNDER THE ADA

Job-related and consistent with business necessity

Employer must have a reasonable belief, based on objective evidence, that:

(1) an employee's ability to perform essential job functions will be impaired by a medical condition; or

(2) an employee will pose a direct threat due to a medical condition."
FIT FOR DUTY EXAMS UNDER THE ADA

*Direct threat* means

a significant risk

of substantial harm

to the health or safety

of the individual

or others

that cannot be eliminated or reduced

by reasonable accommodation.

WHOSE DOCTOR DOES THE EXAM AND WHO PAYS FOR THE EXAM?
INTERMITTENT OR REDUCED SCHEDULE FMLA LEAVE

- Must be in Designation Notice.

- No more than once every 30 days if reasonable safety concerns based on the serious health condition for which the employee is taking FMLA leave.

- An employer may not terminate the employment of the employee while awaiting such a certification of fitness to return to duty for an intermittent or reduced schedule leave absence.
WORKING THE SECOND JOB WHILE ON FMLA LEAVE

- Need a uniformly-applied policy to prohibit
- Fraud
LIGHT DUTY AND THE FMLA

TERMINATION OF AN EMPLOYEE ON FMLA LEAVE