

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

Diane M. Juffras
School of Government

**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.



Notice of Eligibility and Rights & Responsibilities
(Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division


OHR Central Number: 1225-0003
EPLRHS 5312918

In general, to be eligible an employee must have worked for an employer for at least 12 months, meet the hours of service requirement as the 12 months preceding the leave, and work at a site with at least 50 employees within 75 miles. While use of this form by employers is optional, a fully completed Form WH-381 provides employees with the information required by 29 C.F.R. § 825.300(b), which must be provided within five business days of the employee notifying the employer of the need for FMLA leave. Part B provides employees with information regarding their rights and responsibilities for taking FMLA leave, as required by 29 C.F.R. § 825.300(c), (c).

[PART A - NOTICE OF ELIGIBILITY]

TO: JOYA JONES
Employee

FROM: LESLIE LAW, DIRECTOR OF SOCIAL SERVICES
Employer Representative

DATE: 6/27/17

On 6/27/17, you informed us that you needed leave beginning on July 17, 2017 for:

The birth of a child, or placement of a child with you for adoption or foster care;

Your own serious health condition.

Because you are needed to care for your spouse, child, parent due to his/her serious health condition.

Because of a qualifying exigency arising out of the fact that your spouse, son or daughter, parent is on covered active duty or call to covered active duty status with the Armed Forces.

Because you are the spouse, son or daughter, parent, next of kin of a covered servicemember with a serious injury or illness.

This Notice is to inform you that you:

Are eligible for FMLA leave. (See Part B below for Rights and Responsibilities)

Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

You have not met the FMLA's 12-month length of service requirement. Although you may not be eligible for other reasons, you will have worked approximately months towards this requirement. As of the first date of requested leave, you will have worked approximately months towards this requirement.

You have not met the FMLA's hours of service requirement.

You do not work and/or report to a site with 50 or more employees within 75-miles.

If you have any questions, contact Leslie Law or view the FMLA poster located in Employee dining room.

[PART B - RIGHTS AND RESPONSIBILITIES FOR TAKING FMLA LEAVE]

As explained in Part A, you meet the eligibility requirements for taking FMLA leave and still have FMLA leave available in the applicable 12-month period. However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by July 12, 2017. (If a certification is requested, employers must allow at least 15 calendar days from receipt of this notice; additional time may be required in some circumstances.) If sufficient information is not provided in a timely manner, your leave may be denied.

Sufficient certification to support your request for FMLA leave. A certification form that sets forth the information necessary to support your request. is not enclosed.

Sufficient documentation to establish the required relationship between you and your family member.

Other information needed (such as documentation for military family leave):

Page 1 No additional information requested CONTINUED ON NEXT PAGE Form WH-381 Revised February 2013

If your leave does qualify as FMLA leave you will have the following responsibilities while on FMLA leave (only checked boxes apply)

Contact your employer to make arrangements to continue to make your share of the premium payments on your health insurance to maintain health benefits while you are on leave. You have a minimum 30-day (60-day for certain applicable grace periods in which to make premium payments. If payment is not made timely, your group health insurance may be cancelled, provided we notify you in writing at least 15 days before the date that your health coverage will lapse, or, at our option, we may pay your share of the premiums during FMLA leave, and recover these payments from you upon your return to work.

You will be required to pay your share of the cost of health insurance, and/or other leave during your FMLA absence. This means that you will receive your full leave and we will also have received your FMLA leave and covered against your FMLA leave.

Due to your status within the company, you are considered a "key employee" as defined in the FMLA. As a "key employee," restoration to employment may be denied following FMLA leave on the grounds that such restoration will cause substantial and grave economic injury to us. We have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grave economic harm to us.

While on leave you will be required to furnish us with periodic reports of your status and intent to return to work every (indicate interval of periodic reports, in accordance with the particular leave situation) _____

If the circumstances of your leave change, and you are able to return to work earlier than the date indicated on this form, you will be required to notify us at least two workdays prior to the date you intend to report for work.

If your leave does qualify as FMLA leave you will have the following rights while on FMLA leave:

- You have a right under the FMLA for up to 12 weeks of unpaid leave in a 12-month period calculated as:
 - the calendar year (January - December).
 - a fixed leave year based on _____
 - the 12-month period measured forward from the date of your first FMLA leave usage.
 - a "rolling" 12-month period measured backward from the date of any FMLA leave usage.
- You have a right under the FMLA for up to 26 weeks of unpaid leave in a single 12-month period to care for a covered servicemember with a serious injury or illness. This single 12-month period commenced on 7/17/17
- Your health benefits must be maintained during any period of unpaid leave under the same conditions as if you continued to work.
- You must be reinstated to the same or an equivalent job with the same pay, benefits, and terms and conditions of employment on your return from FMLA-protected leave. If your leave extends beyond the end of your FMLA entitlement, you do not have return rights under FMLA.
- If you do not return to work following FMLA leave for a reason other than: 1) the continuation, recurrence, or onset of a serious health condition which would entitle you to FMLA leave; 2) the continuation, recurrence, or onset of a covered servicemember's serious injury or illness which would entitle you to FMLA leave; or 3) other circumstances beyond your control, you may be required to reimburse us for our share of health insurance premiums paid on your behalf during your FMLA leave.
- If we have not informed you above that you must not exceed paid leave while taking your unpaid FMLA leave entitlement, you have the right to have _____ sick, _____ vacation, and/or _____ other leave run concurrently with your unpaid FMLA leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable restrictions related to the substitution of paid leave are referred to or set forth below. If you do not meet the requirements for taking paid leave, you remain entitled to take unpaid FMLA leave.

For a copy of conditions applicable to sick/vacation/other leave usage please refer to handbook available at HR Office

Applicable Conditions for use of paid leave: Any accrued comp time must be used first, after that any accrued sick leave; vacation leave must be used last.

Once we obtain the information from you as specified above, we will inform you, within 5 business days, whether your leave will be designated as FMLA leave and amount towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

Leslie Law at 919-555-4444

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT
 It is mandatory for employers to provide employees with notice of their eligibility for FMLA protection and their rights and responsibilities. 29 U.S.C. § 2617; 29 C.F.R. § 825.300(b), (c). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.300. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room 5-3002, 200 Constitution Ave., NW, Washington, DC 20210. DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.
 Page 2 Form WH-381 Revised February 2015

Certification of Health Care Provider for Employee's Serious Health Condition (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division

OMB Case# Number: 1217-0003 Paper: 332-0018

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT

SECTION I: For Completion by the EMPLOYER
 INSTRUCTIONS to the EMPLOYER: The Family and Medical Leave Act (FMLA) provides that an employer may require an employee seeking FMLA protection because of a need for leave due to a serious health condition to submit a medical certification issued by the employee's health care provider. Please complete Section I before giving this form to your employee. Your response is voluntary. While you are not required to use this form, you may not ask the employee to provide more information than allowed under the FMLA regulations. 29 C.F.R. § 825.306-825.308. Employers must generally maintain records and documents relating to medical certifications, recertifications, or medical histories of employees created for FMLA purposes as confidential medical records in separate files/records from the usual personnel file and in accordance with 29 C.F.R. § 1601.140(a)(3), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1655.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: _____
 Employer's job title: _____ Regular work schedule: _____
 Employer's essential job functions: _____

Check if job description is attached:

SECTION II: For Completion by the EMPLOYEE
 INSTRUCTIONS to the EMPLOYEE: Please complete Section II before giving this form to your medical provider. The FMLA permits an employer to require that you submit a timely, complete, and sufficient medical certification to support a request for FMLA leave due to your own serious health condition. If requested by your employer, your response is required to obtain or retain the benefit of FMLA protections. 29 U.S.C. § 2613; 29 C.F.R. § 825.313. Failure to provide a complete and sufficient medical certification may result in a denial of your FMLA request. 29 C.F.R. § 825.313. Your employer must give you at least 15 calendar days to return this form. 29 C.F.R. § 825.305(b).

Your name: _____
 First _____ Middle _____ Last _____

SECTION III: For Completion by the HEALTH CARE PROVIDER
 INSTRUCTIONS to the HEALTH CARE PROVIDER: Your patient has requested leave under the FMLA. Answer, fully and completely, all applicable parts. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your best estimate based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "intermittent," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage. Limit your responses to the condition for which the employee is seeking leave. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1655.10, genetic services, as defined in 29 C.F.R. § 1655.3(a), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1655.3(b). Please be sure to sign the form on the last page.

Provide name and business address: _____
 Type of practice / Medical specialty: _____
 Telephone: (_____) _____ Fax: (_____) _____

PART A: MEDICAL FACTS
 1. Approximate date condition commenced: _____
 Probable duration of condition: _____
 Mark below as applicable:
 Was the patient admitted for an overnight stay in a hospital, hospice, or residential medical care facility?
 No ___ Yes ___ If so, dates of admission: _____
 Date(s) you treated the patient for condition: _____
 Will the patient need to have treatment visits at least twice per year due to the condition? No ___ Yes ___
 Was medication, other than over-the-counter medication, prescribed? No ___ Yes ___
 Was the patient referred to other health care provider(s) for evaluation or treatment (e.g., physical therapist)?
 No ___ Yes ___ If so, state the nature of such treatments and expected duration of treatment: _____

2. Is the medical condition pregnancy? No ___ Yes ___ If so, expected delivery date: _____

3. Use the information provided by the employer in Section I to answer this question. If the employer fails to provide a list of the employee's essential functions or a job description, answer these questions based upon the employer's own description of his/her job functions.
 Is the employee unable to perform any of his/her job functions due to the condition? No ___ Yes ___
 If so, identify the job functions the employee is unable to perform: _____

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment): _____

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PART B. AMOUNT OF LEAVE NEEDED

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? No Yes

If so, estimate the beginning and ending dates for the period of incapacity: _____

6. Will the employee need to attend follow-up treatment appointments or work part-time or on a reduced schedule because of the employee's medical condition? No Yes

If so, are the treatments or the reduced number of hours of work medically necessary? No Yes

Estimate treatment schedule, if any, including the dates of any scheduled appointments and the time required for each appointment, including any recovery period:

Estimate the part-time or reduced work schedule the employee needs, if any:

_____ hour(s) per day, _____ days per week from _____ through _____

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? No Yes

If medically necessary for the employee to be absent from work during the flare-ups? No Yes. If so, explain:

Based upon the patient's medical history and your knowledge of the medical condition, estimate the frequency of flare-ups and the duration of related incapacity that the patient may have over the next 6 months (e.g., 1 episode every 3 months lasting 1-2 days).

Frequency: _____ times per _____ week(s) _____ month(s)

Duration: _____ hours or _____ day(s) per episode

ADDITIONAL INFORMATION: IDENTIFY QUESTION NUMBER WITH YOUR ADDITIONAL ANSWER.

Signature of Health Care Provider _____ Date _____

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 30 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR, RETURN TO THE PATIENT.**

Page 3 CONTINUED ON NEXT PAGE Form WH-880-E Revised May 2015 Page 4 Form WH-880-E Revised May 2015

Designation Notice (Family and Medical Leave Act)

U.S. Department of Labor Wage and Hour Division

WHD

OMB Control Number: 1225-0003

Revised: 5/12/2015

Leave covered under the Family and Medical Leave Act (FMLA) must be designated as FMLA-protected and the employer must inform the employee of the amount of leave that will be counted against the employee's FMLA leave entitlement. In order to determine whether leave is covered under the FMLA, the employer may request that the leave be supported by a certification. If the certification is incomplete or insufficient, the employer must state in writing what additional information is necessary to make the certification complete and sufficient. While use of this form by employers is optional, a fully completed Form WH-352 provides an easy method of providing employees with the written information required by 29 C.F.R. §§ 825.306(c), 825.381, and 825.306(c).

To: JOMA JONES

Date: July 3, 2017

We have reviewed your request for leave under the FMLA and any supporting documentation that you have provided. We received your most recent information on 7/3/17 and decided:

Your FMLA leave request is approved. All leave taken for this reason will be designated as FMLA leave.

The FMLA requires that you notify us as soon as practicable if dates of scheduled leave change or are extended, or were initially unknown. Based on the information you have provided to date, we are providing the following information about the amount of time that will be counted against your leave entitlement:

Provided there is no deviation from your anticipated leave schedule, the following number of hours, days, or weeks will be counted against your leave entitlement: 4 weeks

Because the leave you will need will be unscheduled, it is not possible to provide the hours, days, or weeks that will be counted against your FMLA entitlement at this time. You have the right to request this information once in a 30-day period (if leave was taken in the 30-day period).

Please be advised (check if applicable):

You have requested to use paid leave during your FMLA leave. Any paid leave taken for this reason will count against your FMLA leave entitlement.

We are requiring you to substitute or use paid leave during your FMLA leave.

You will be required to present a fitness-for-duty certificate to be restored to employment. If such certification is not timely received, your return to work may be delayed until certification is provided. A list of the essential functions of your position is is not attached. If attached, the fitness-for-duty certification must address your ability to perform these functions.

Additional information is needed to determine if your FMLA leave request can be approved:

The certification you have provided is not complete and sufficient to determine whether the FMLA applies to your leave request. You must provide the following information no later than _____ (Provide at least seven calendar days), unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.

(Specify information needed to make the certification complete and sufficient)

We are exercising our right to have you obtain a second or third opinion medical certification at our expense, and we will provide further details at a later time.

Your FMLA Leave request is Not Approved.

The FMLA does not apply to your leave request.

You have exhausted your FMLA leave entitlement in the applicable 12-month period.

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

It is mandatory for employers to inform employees in writing whether leave requested under the FMLA has been determined to be covered under the FMLA. 29 U.S.C. § 2617; 29 C.F.R. §§ 825.306(d), (e). It is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 10-30 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Ave., NW, Washington, DC 20210. **DO NOT SEND THE COMPLETED FORM TO THE WAGE AND HOUR DIVISION.**

Form WH-382 January 2009

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.

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OSP Rev. 02/12

SOCIAL WORKER II

Work in this class involves providing professional social work services to clients in a variety of settings including local, human service agencies, correctional facilities, teaching hospitals, medical schools, psychiatric hospitals and mental retardation centers. Work involves evaluating the client's situation and his/her ability to deal with it, developing a social history, psychosocial assessment, service plan and/or treatment plan and follow-up. Services may include placement in a residential facility, basic counseling, support, and reinforcement in areas such as death and dying, employment, vocational, medical, health, or behavioral issues. Employees address such problems as adjustment to illness or disability, placement into an institution, rest home or nursing facility, financial concerns, socialization issues of the socially handicapped or those debilitated by age or illness. They may provide information to and confer with schools, natural parents and foster parents on habilitation plans, behavior management, and other problem areas or needs. Employees may be involved in recruitment, evaluation, and training of foster parents and other care providers. Employees may develop community or service resources and/or develop volunteer programs. In certain treatment settings workers participate on habilitation/treatment teams and provide the social work perspective. Positions at this level combine difficult services performed under supervisory guidance with relatively conventional services performed under more relaxed supervision. Work is differentiated from Social Worker I by the range of cases, the difficulty of personal contacts, and the theoretical knowledge required to perform the work. Employees report to a higher level professional or program manager.

I. DIFFICULTY OF WORK:

Variety and Scope - Employees independently perform assessments to identify needs and establish an appropriate service/treatment plan and may provide supportive/directive counseling to clients and families in addressing needs. In some settings behavioral approaches are used to maximize client involvement. Employees may serve as inter/multi-disciplinary team member. Employees may refer clients and families to a variety of services to meet financial, psychological, emergency care, emotional, or other needs. Employees may assume a case manager role to follow the client through agency and external services.

Intricity - Clients present employees with a broad range of service needs. Employees, regardless of the setting, must be able to make accurate assessments/evaluations and use analysis and judgment to develop an appropriate service/treatment plan. Employees utilize knowledge of a range of services and of supportive level counseling and other counseling techniques to provide services to clients.

Subject Matter Complexity - Work requires an understanding of social work practices and theories, an understanding of the availability and interactions of a variety of community services and agencies and a range of service providers. Some settings require a knowledge of medical terminology and disease processes and/or mental retardation/developmental programs and behavior management techniques.

Guidelines - Employees utilize agency guidelines, specific federal or state standards, and principles of a variety of supportive counseling techniques to provide services to clients.

II. RESPONSIBILITY:

Nature of Instructions - Employees are aware of program aims and objectives and address these with clients independently. Employees usually receive new program requirements/regulations and on-the-job training from social work supervisors.

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Nature of Review - Direct client interactions, services development, and referrals are documented in accordance with agency requirements. Work is reviewed through quality control, technical and administrative review provided by the supervisor and/or specific regulatory body.

Scope of Decisions - Decisions regarding assessments and services impact on clients and their families; employees may provide direction or instruction to lower level staff, volunteers or care providers.

Consequence of Decisions - Service/treatment decisions affect the client, family, and facility operations and impact on the social psychological emotional, or physical health of the client.

III. INTERPERSONAL COMMUNICATIONS:

Scope of Contacts - Contacts vary depending upon the agency and/or service area and usually include the client, service providers' community agencies and groups. Contacts may also include volunteers, foster/natural parents, court officials schools nursing homes interns and residents.

Nature and Purpose - Employees work with clients, families, habilitation/ treatment teams in the development and implementation of treatment plans. Contact with other professionals are required in the coordination of services, provision of program orientation and consultation to community.

IV. OTHER WORK DEMANDS:

Work Conditions - Employees work in a variety of service settings which range from modern public service buildings to correctional facilities, community residential facilities, home environments, or institutions where odors and noise may be present.

Hazards - Employees may experience emotional stress due to the nature of interactions with clients or service providers. Behavioral problems such as aggression of clients could cause bodily injury for employees in some settings.

V. RECRUITMENT STANDARDS:

Knowledge, Skills, and Abilities - Considerable knowledge of social work principles, techniques, and practices and their application to individual casework group work and community problems. Knowledge of the psychosocial, socioeconomic and behavioral problems and their treatment. Knowledge of governmental and private organizations and community resources. Knowledge of laws, regulations and policies which govern the program. General knowledge of medical terminology, disease processes and their treatment is required in certain programs or settings. Skill in establishing rapport with a client and applying techniques of assessing psychosocial, behavioral, and psychological aspects of client's problem. Ability to establish and maintain effective working relationships with administrative superiors members of case load and their families, and with civics medical, social and religious organizations. Ability to train or instruct lower-level social workers, students, or interns. Ability to express ideas clearly and concisely and to plan and execute work.

Minimum Training and Experience Requirements - Bachelor's degree in social work from an appropriately accredited institution; bachelor's degree in a human services field from an appropriately accredited institution and one year of directly related experience; bachelor's degree from an appropriately accredited institution and two years directly related experience; or an equivalent combination of education and experience.

Special Note - This is a generalized representation of positions in this class and is not intended to identify essential functions per ADA. Examples of work are primarily essential functions of the majority of positions in the class, but may not be applicable to all positions.

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



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.

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.

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.

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

FIT FOR DUTY EXAMS UNDER THE ADA

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

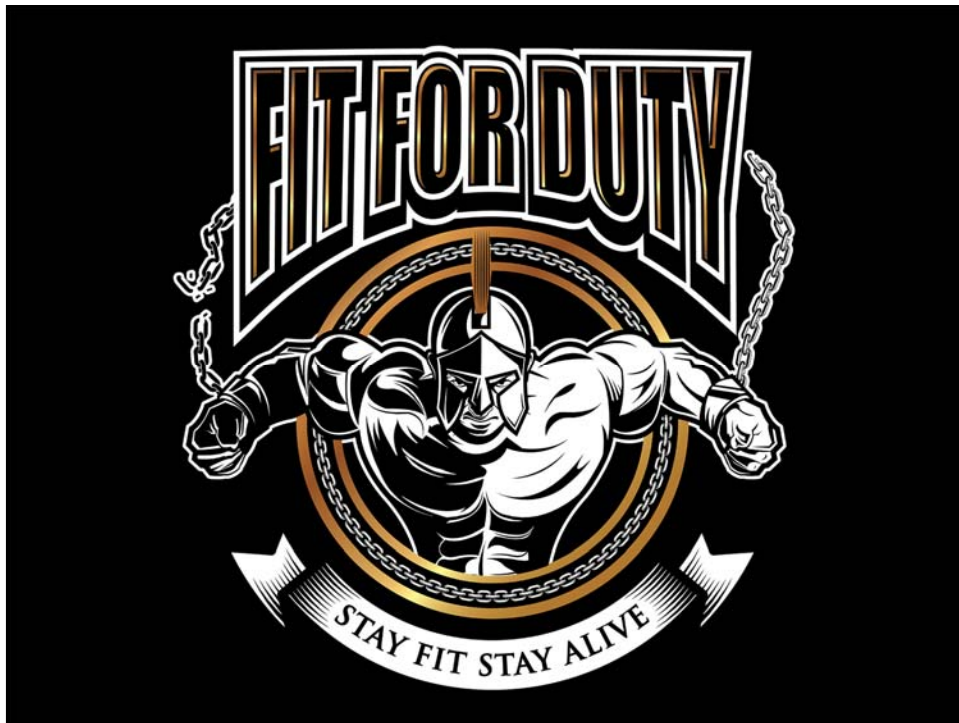
Direct threat means
a significant risk
of substantial harm
to the health or safety
of the individual
or others
that cannot be eliminated or reduced
by reasonable accommodation.

**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