

FITNESS-FOR-DUTY TESTS AND OTHER FUN FMLA ISSUES

Social Services Directors' Legal Conference

June 27, 2017

Any discussion of requiring fitness-for-duty certifications upon an employee's return from FMLA leave has to start with how an employee requests FMLA leave and how an employer must respond. For an employer to take advantage of the FMLA provision allowing it to request a fit-for-duty certification, it must make that request at a very particular point in the process of approving leave.

Where the need for FMLA leave is foreseeable, employees must give employers notice as soon as they can. Notice can be oral or it can be in writing. An employer may require an employee to make a request in writing.

Medical certification of the need for leave: An employer may require employees to provide medical certification of the need for FMLA leave from the employee's health care provider.

- The employer must request the certification in writing **within five days of the employee's request** for FMLA leave (where the need for leave has been foreseeable) or within five days after the leave has begun (where the need for leave has not been foreseeable).
- The employer must allow the employee 15 calendar days to obtain the certification.
- If the employee does not return the certification within the 15-day window, the employee loses his or her right to FMLA leave and to return to the same or a substantially equivalent job. It would not be a violation of the FMLA to either deny FMLA leave or to fire an employee who has not returned a medical certification after 15 days, **although the regulations require an employer to make an exception when it has not been "practicable" for the employee to obtain the certification despite his/her diligent, good faith efforts to do so.** 29 CFR § 825.305(b)
- An employer is entitled to a complete and sufficient certification. For a certification to be complete, all of the applicable entries must be filled out. A complete certification may still be insufficient if the information provided is vague, ambiguous or non-responsive.
- If an employer receives an incomplete or insufficient certification, it must advise the employee in writing what additional information must be provided. The employee has seven (7) calendar days in which to provide the required information.
- FMLA leave may be denied to any employee requesting leave who fails to return a medical certification or who fails to return a complete and sufficient certification after being given seven days to resubmit it. 29 CFR § 825.305(c) and (d).

- The employer may require the employee to undergo an examination for a second opinion with a health care provider of the employer’s choice at the employer’s cost. If the employee’s and the employer’s healthcare provider disagree, the employee must obtain a certification from a third provider (jointly agreed upon by the employer and employee), again at the employer’s cost. The decision of the third provider is binding. See 29 CFR § 825.307(b) and (c).

Who qualifies as a health care provider for FMLA certification purposes?

- licensed MDs and ODs
 - clinical psychologists
 - nurse-midwives
 - optometrists
 - chiropractors (in certain cases)
 - dentists
 - clinical social workers
 - nurse practitioners
 - podiatrists
 - official Christian Science practitioners
- See 29 CFR § 825.800 (“Definitions”).

Employer Notice and Designation Requirements:

Designation Notice: *Here’s where the fit-for-duty certification must be requested!*

Once an employer has received a completed medical certification form, or otherwise has acquired enough knowledge to determine whether the employee is entitled to FMLA leave, the employer must give the employee a separate Designation Notice (Form WH-382) advising the employee that the leave is being designated FMLA leave within five business days.

Regardless of whether the information is also included in the Eligibility and Rights and Responsibilities Notice, an employer must include the following information in the Designation Notice:

- whether accrued paid leave will be substituted for unpaid leave;
- **whether the employee must provide a fitness-for-duty certification before returning to work;**
- a list of the employee’s essential job functions, if the fitness-for-duty certification
- must address the employee’s ability to perform essential job functions; and
- notice of the amount of leave that will be counted against the employee’s FMLA entitlement.

See 29 CFR § 825.300(d).

At the same time that the employer notifies an employee that s/he is eligible for FMLA leave, it must also give the employee a second notice (Notice of Eligibility and Rights and Responsibilities, Form WH-381) that details the specific rights and the specific expectations and obligations of the employee on FMLA leave.

The Notice of Rights and Responsibilities must also include the following information:

- whether the employee must provide a medical certification;
- whether the leave will count against the employee’s 12-week FMLA entitlement;
- whether the employer requires the use of accrued paid leave in lieu of unpaid leave;

- that the employee may elect to use accrued paid leave in place of unpaid leave and any conditions related to the substitution of paid leave for unpaid leave (for example, that per the employer’s policy, sick leave may only be used for an employee’s own illness);
- whether the employee needs to make contributions toward health insurance premium payments and, if so, what arrangements the employee needs to make, as well as the consequences of a failure to make contribution payments;
- that the employee is liable for reimbursing the employer for the employer’s health insurance contributions if the employee fails to return to work upon the conclusion of FMLA leave;
- whether the employee is a “key employee” of the organization and the reasons why restoration may be denied upon the conclusion of FMLA leave.
- that the employee has the right to return to the same or an equivalent job.

The notice may – but does not have to include other information, such as:

- whether the employee must provide periodic updates on his/her condition during the period of FMLA leave;
- **whether the employee must provide a fitness-for-duty certification before returning to work.**

See 29 CFR § 825.300(c)

The Fitness for Duty Certification

Remember: There is one chance and only one chance to ask the employee to provide a fit-for-duty certification when s/he returns from FMLA leave and that is on the Designation Notice provided after the employee requests FMLA leave and, if required, provides a medical certification. If you don’t ask for it on the Designation Notice, you are out of luck!

1. An employer may only require an employee to return a fitness-for-duty certification if it has a uniformly-applied policy or practice that requires all similarly-situated employees (same occupation, for example, or same serious health condition) to present s certification from the employee’s health care provider that the employee is able to resume work.
2. The fitness for duty certification may only ask for information related to the particular health condition for which the employee is taking FMLA leave.
3. An employer may require that the certification ***specifically*** address the employee’s ability to perform the essential functions of the employee’s job. ***The employer must provide the employee with a list of the essential functions with the designation notice required and must indicate in the designation notice that the certification must address the employee’s ability to perform those essential functions.***
 - If the employer satisfies these requirements, the employee’s health care provider must certify that the employee can perform the identified essential functions of his or her job.

The employer may contact the employee's health care provider for purposes of clarifying and authenticating the fitness-for-duty certification under the same conditions as govern clarifying and authenticating a medical certification. Clarification may be requested only for the serious health condition for which FMLA leave was taken.

- The employer may not delay the employee's return to work while contact with the health care provider is being made.
 - No second or third opinions on a fitness-for-duty certification may be required.
4. An employer may delay restoration to employment until an employee submits a required fitness-for-duty certification. An employee who does not provide a fitness-for-duty certification or request additional FMLA leave is no longer entitled to reinstatement under the FMLA (unless the employer did not give the employee notice of the fit-for-duty requirement in the designation notice).
 5. The employee has the same obligations to participate and cooperate (including providing a complete and sufficient certification or providing sufficient authorization to the health care provider to provide the information directly to the employer) in the fitness-for-duty certification process as in the initial certification process.
 6. Employees are responsible for the cost of the fitness-for-duty certification just as they are responsible for the cost of obtaining the initial medical certification.

Fitness-for-Duty Certifications and Intermittent or Reduced FMLA Leave

An employer is not entitled to a certification of fitness to return to duty for each absence taken on an intermittent or reduced leave schedule.

- An employer may request a fitness for duty certification for intermittent or reduced leave absences once every 30 days **if** reasonable safety concerns exist regarding the employee's ability to perform his or her duties, based on the serious health condition for which the employee took such leave.
- As with extended leave FMLA, the employer must inform the employee at the same time it issues the designation notice that for each subsequent instance of intermittent or reduced schedule leave, the employee will be required to submit a fitness-for-duty certification unless one has already been submitted within the past 30 days.
- An employer can set a different interval for requiring a fitness-for-duty certification as long as it does not exceed once every 30 days and as long as the employer advises the employee of the requirement in advance of the employee taking 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.

Once an Employee Returns to Work

Whether or not an employer has required a fit-for-duty certification, it sometimes happens that after an employee returns to work the employer has reason to question whether the same condition for which the employee took FMLA leave is limiting the employee's ability to perform his or her job functions. Now the Americans with Disabilities Act applies. In such a case, the ADA allows an employer may ask the employee to undergo a fitness for duty exam related to the employee's ability to perform essential job duties. In this case, the exam will be at the employer's expense and may be done by a medical provider of the employer's choosing.

Some Other "Fun" Facts about the FMLA

1. Employers sometimes learn to their dismay that an employee is working another job while on FMLA leave. Can an employer restrict the activities of employees on FMLA leave?
 - Employers may only restrict the kinds of activities that an employee on FMLA leave may engage in if there is a uniform policy of this kind applicable to all employees on leave of whatever kind. Thus, an employer may have a policy that says no employee on a leave of absence may be employed in any capacity during the leave and that violation of this policy may result in immediate termination of both the leave of absence (including FMLA leave) and employment.
 - If an employer discovers that an employee is engaging in an activity that would appear impossible or prohibited if the reason for FMLA leave were true (for example, the medical certification form indicates that the employee needs complete bed rest for a month and the employee is seen playing in a softball game), the employer may terminate the FMLA leave and/or the employee.
2. The FMLA prohibits an employer from requiring an employee to take a light- duty assignment in lieu of FMLA leave.
3. Employers may terminate employees during FMLA leave if they would have done so anyway were the employee not on FMLA leave. This usually involves a performance issue or wrongdoing that has only come to light after the employee has begun FMLA leave.

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



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

OMB Control Number: 1235-0003
Expires: 5/31/2018

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 protections 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 files and in accordance with 29 C.F.R. § 1630.14(c)(1), if the Americans with Disabilities Act applies, and in accordance with 29 C.F.R. § 1635.9, if the Genetic Information Nondiscrimination Act applies.

Employer name and contact: _____

Employee's job title: _____ Regular work schedule: _____

Employee'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, 2614(c)(3). 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 "lifetime," "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. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b). Please be sure to sign the form on the last page.

Provider's 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 employee'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):

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.

Is it 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 20 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 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.**

Designation Notice
(Family and Medical Leave Act)

U.S. Department of Labor
Wage and Hour Division



OMB Control Number: 1235-0003
Expires: 5/31/2018

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-382 provides an easy method of providing employees with the written information required by 29 C.F.R. §§ 825.300(c), 825.301, and 825.305(c).

To: _____

Date: _____

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 _____ 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: _____

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 _____, unless it is not practicable under the particular circumstances despite your diligent good faith efforts, or your leave may be denied.
(Provide at least seven calendar days)

(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. §§ 825.300(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 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.**

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

U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division



OMB Control Number: 1215-0181
Expires: 12/31/2011

In general, to be eligible an employee must have worked for an employer for at least 12 months, have worked at least 1,250 hours in 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(b), (c).

[Part A – NOTICE OF ELIGIBILITY]

TO: _____
Employee

FROM: _____
Employer Representative

DATE: _____

On _____, you informed us that you needed leave beginning on _____ 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 active duty or call to active duty status in support of a contingency operation as a member of the National Guard or Reserves.
- 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. As of the first date of requested leave, you will have worked approximately ___ months towards this requirement.
 - You have not met the FMLA's 1,250-hours-worked 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 _____ or view the FMLA poster located in _____.

[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 _____.** (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/_____ is not enclosed.
- Sufficient documentation to establish the required relationship between you and your family member.
- Other information needed: _____

No additional information requested

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

Contact _____ at _____ 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 (or, indicate longer period, if applicable) grace period 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 use your available paid _____ sick, _____ vacation, and/or _____ other leave during your FMLA absence. This means that you will receive your paid leave and the leave will also be considered protected FMLA leave and counted against your FMLA leave entitlement.

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 grievous economic injury to us. We ___have/___ have not determined that restoring you to employment at the conclusion of FMLA leave will cause substantial and grievous 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, as appropriate for 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 the reverse side of 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 _____.
- 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 use accrued 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 leave entitlement, provided you meet any applicable requirements of the leave policy. Applicable conditions related to the substitution of paid leave are referenced 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 _____ available at: _____.

_____ Applicable conditions for use of paid leave: _____

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 count towards your FMLA leave entitlement. If you have any questions, please do not hesitate to contact:

_____ at _____.

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. § 825.500. 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 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 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.**

FMLA FITNESS FOR DUTY CERTIFICATION

Employee Name _____ **Employee Department** _____
Home Address _____ **Employee Position** _____
_____ **Work phone** _____
Home phone _____ **Cell phone** _____

Date FMLA leave began _____

Medical Return to Work Certification to Be Completed by Health Care Provider

Name of Health Care Provider _____
Name of Health Care Practice _____
Address _____
Phone _____
Name of Patient _____
Date of Examination _____

Date employee is released to return to work _____

Is the employee able to perform the essential functions of his or her position (see attached list of essential functions) as of the return to work date? YES_____ NO_____

Additional comments _____

Certification:

I affirm that the information provided above is true and accurate to the best of my knowledge.

Healthcare Provider’s Signature

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, we are asking that you not provide any genetic information when responding to this certification of fitness for return to duty. “Genetic information” as defined by GINA includes an individual’s family medical history, the results of an individual’s or family member’s genetic tests, the fact that an individual or an individual’s family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual’s family member of an embryo lawfully held by an individual or family member receiving assistive reproductive services.

