

CITY OF MEMPHIS

**FMLA ADMINISTRATIVE POLICY
AND PROCEDURE MANUAL**

Human Resources Division
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FMLA ADMINISTRATIVE POLICY AND PROCEDURE MANUAL

Table of Contents

I.	Introduction	1
II.	Eligibility for FMLA	2
III.	Qualifying Reasons for FMLA.....	3
IV.	Birth, Adoption, or Care of a Newborn.....	4
V.	“Needed to Care for” a Family Member	5
VI.	Definitions of a Family Member	6
VII.	Definitions of a Serious Health Condition.....	7
VIII.	Definitions of a Health Care Provider.....	8
IX.	Medical Certification.....	9
	Recertification	9
X.	Intermittent or Reduced Schedule FMLA Leave.....	11
XI.	Calculating and Recording FMLA Leave	12
XII.	Paid or Unpaid FMLA Leave.....	13
XIII.	Reinstatement Upon Return from FMLA Leave	14
IXX.	Department Responsibilities	15
XX.	Employee Responsibilities	17
XXI.	Qualifying Exigency	18
XXII.	Military Caregiver Leave	20
Appendices		
	Electronic Document (edoc) Processing.....	21
	Supervisor Checklist.....	22
	Employee Checklist	26
	Recertification Form Letter Including Attendance Record.....	29

Introduction

In compliance with Public Law 103-3, the Family and Medical Leave Act, as amended in February, 2008, leave is available to all City of Memphis employees with the exception of employees who work less than 1250 hours during a 12-month period of time and fail to work a total of twelve (12) months for the City of Memphis. This policy is issued to ensure City employees receive, as a minimum, the level time provided them by the provisions set forth in the Family and Medical Leave Act (FMLA).

Eligibility for FMLA

To be eligible for FMLA, an employee must have:

1. Worked at least 12 months for the City of Memphis. The 12 months of employment need not be consecutive months.

Any portion of a week that an employee is on the payroll counts as a full week for FMLA eligibility.

Separate periods of employment in which the break in service exceeds seven years will not be used to determine FMLA eligibility.

2. Worked at least 1,250 hours during the 12 months preceding the need for leave

These are actual work hours and do not include paid time off.

This eligibility requirement must be verified with the first FMLA request and for each new qualifying reason during the calendar year.

Additional provisions to note:

Part time employees are eligible for FMLA if they meet the above requirements.

FMLA may be requested (or designated by the department) using [Form 1, FMLA Leave Notice of Designation, Request, & Approval](#) or other forms approved by the Department of Labor, including WH-380-E or WH-380-F [\(Insert links\)](#)

Once eligibility requirements are met for a specific qualifying reason, eligibility for FMLA continues throughout the FMLA rolling year for that qualifying reason even if hours worked drop below 1,250.

If, while on a non-FMLA leave of absence, an employee becomes eligible for FMLA and the reason for the leave qualifies for FMLA, the remaining portion of the leave is to be designated (with notice to the employee) as FMLA.



Check eligibility carefully. Once it is determined an employee is eligible for FMLA, and the leave is approved, FMLA cannot later be denied if it is discovered the eligibility criteria are not met.

Employees who unequivocally state their intent not to return to work are no longer eligible for FMLA.



Time in the military service covered under the Uniformed Services Employment and Reemployment Rights Act (USERRA) counts toward eligibility for FMLA.

Qualifying Reasons for FMLA

FMLA may be taken for any of the following reasons:

birth of a child and to care for a newborn child of the employee or spouse

placement with the employee of a child for adoption or foster care

to care for the employee's spouse, child, or parent with a serious health condition

a serious health condition that makes an employee unable to perform the functions of the employee's job

a qualifying exigency arising out of the employee's spouse, child, or parent's covered active duty* or call to active duty in support of a contingency operation

to care for a covered service member with a serious injury or illness incurred in the line of active duty if the employee is the spouse, child, parent, or next of kin of the service member (military caregiver leave)



Additional provisions to note:

Employees can take FMLA for more than one qualifying reason in a FMLA rolling year but are limited to a total of 12 weeks in the FMLA rolling year (except military caregiver leave).

Contact Human Resources Administration if you are uncertain whether the reason for FMLA is a qualifying one.

*Covered active duty means duty during deployment to a foreign country.

Birth, Adoption, or Care of a Newborn

Both mother and father are each entitled to up to 12 weeks of FMLA leave for the birth of their child, if meeting individual FMLA eligibility. This also applies to adoption and foster care placement. If both parents are employed by the City only one 12 week FMLA period is allowed. Under Tennessee law, mothers are entitled up to 16 weeks of maternity under the Tennessee Maternity Act.

Both mother and father are each entitled to FMLA for bonding time until the child is one year of age or in the case of child placement, the child has been in the home for one year. While FMLA for bonding time may be taken on an intermittent basis, the minimum length of any intermittent leave for bonding is two (2) weeks.

FMLA for incapacity due to pregnancy may begin before the birth of the child if necessary for prenatal care, doctor appointments due to the pregnancy, or severe morning sickness. Medical certification is required for FMLA leave for incapacity due to pregnancy (or to care for a pregnant spouse who is incapacitated), for the mother's serious health condition following the birth of the child, or for the newborn child's serious health condition.

FMLA for adoption or foster care may begin before placement if necessary for counseling, court appearances, attorney/physician consultation, or travel to another country.

“Needed to Care for” a Family Member

FMLA leave to care for a family member with a serious health condition is limited to the employee's:

- spouse
- own parent (not in-laws)
- the employee's child or stepchild
- covered service member

Caring for a family member includes:

- psychological care, such as comfort and support
- physical care, such as feeding, dressing and transportation to doctor appointments
- substituting for others who normally care for the family member; the employee need not be the only individual available to care for the family member
- making arrangements for changes in care such as transfer to a nursing home

Caring for a family member **does not** include:

- visiting a sick parent who is being cared for by another family member
- child care when the child is not incapacitated due to a serious health condition

Definitions of a Family Member

Spouse

legal spouse as defined by Tennessee law

Parent

biological, adoptive, step or foster father or mother

any other individual who stood in loco parentis to the employee when the employee was under age 18

Child

biological, adopted or foster child, legal ward, stepchild or child of a person standing in loco parentis

for FMLA to care for a child with a serious health condition, the child must be:

- under the age of 18
- age 18 or older if incapable of self-care because of a mental or physical disability

for FMLA for military caregiver leave or family military leave, the child may be any age

Next of Kin

nearest blood relative of the covered service member other than the spouse, parent or child in the following order of priority unless the service member has designated in writing another blood relative:

- blood relatives granted legal custody of the service member
- brothers and sisters
- grandparents
- aunts and uncles
- first cousins

Additional provisions to note:

Documentation (birth certificate, court document) may be requested to confirm the family relationship and the age of a child.

Definitions of a Serious Health Condition

A serious health condition is defined as an illness or injury that involves:

Inpatient Care

1. A condition requiring overnight hospitalization and subsequent treatment

Continuing Treatment

2. A period of incapacity of more than 3 full consecutive calendar days **and**
 - a. An in-person visit to a health care provider within 7 days of the first day of incapacity and a second in-person visit within 30 days of the first day of incapacity **or**
 - b. An in-person visit to a health care provider within 7 days of the first day of incapacity followed by a regimen of continuing treatment such as a course of prescription medication or physical therapy
3. Pregnancy or prenatal care
4. Chronic conditions continuing over an extended period of time (e.g. asthma, diabetes, migraine headaches)
 - a. Any period of incapacity
 - b. May cause episodic rather than continuous incapacity
 - c. Requires at least two visits annually to the health care provider
5. Permanent or long-term conditions (e.g. Alzheimer's, stroke, terminal diseases)
 - a. Any period of incapacity
 - b. Requires continuing supervision by a health care provider
6. Conditions requiring multiple treatments (e.g. chemotherapy, dialysis, physical therapy)
 - a. Any period of incapacity
 - b. Restorative surgery or conditions, if left untreated, would result in incapacity of more than 3 full consecutive calendar days

Additional provisions to note:

Incapacity is defined as the inability to work or perform other regular daily activities.

The common cold, flu, ear aches, upset stomach, minor ulcers, headaches (other than migraines), routine dental or orthodontia problems, periodontal disease, etc., are not serious health conditions unless they fall within one of the above conditions.

Treatment for substance abuse may be a serious health condition if it falls within one of the above conditions.

Definitions of a Health Care Provider

A licensed physician

Another person capable of providing health care services such as:

- Podiatrists
- Dentists
- Clinical Psychologists
- Optometrists
- Chiropractors
- Nurse practitioners
- Nurse midwives
- Clinical social workers
- Physician assistants
- Christian Science Practitioners

Medical Certification

Medical certification is required if the qualifying reason for the FMLA is a serious health condition for the employee or the employee's spouse, child, or parent. [Form 2E, Medical Certification for Employee](#) and [Form 2F, Medical Certification for Family](#) may be used for this purpose.

Medical certification must be requested, in writing, at the time the employee gives notice of the need for FMLA or within 5 business days.

It is the employee's responsibility to provide the completed certification within 15 calendar days.

If the certification is incomplete or insufficient, the City shall return the certification to the employee identifying (in writing) the additional information necessary to make the certification complete and sufficient. The employee is to be given 7 additional calendar days to obtain the necessary information.

The employee must authorize a representative from the City to obtain clarification and verification from the health care provider. Information obtained from the health care provider is limited to the information on the medical certification form. The employee's direct supervisor shall not initiate any such contact with the health care provider.

The employee must cooperate throughout this process and if complete and sufficient medical certification is not provided, the requested FMLA leave may be denied. In addition the employee may not use any type of paid time off and absences incurred may be subject to corrective action.

The cost of acquiring medical certification (if any) is paid by the employee, and the employee is not entitled to be paid for time or travel to obtain the certification.

Recertification

Employees may be asked to recertify the need for FMLA, and the request for recertification must always be made in connection with an absence.

When Recertification May Be Requested	
Minimum Duration of Serious Health Condition	Frequency of Request
30 days or less	every 30 days
30 days to 6 months	expiration of minimum duration period
6 months or more	every 6 months

Recertification may be requested in less than 30 days if:

- The employee requests an extension of the leave
- Circumstances in the previous certification have changed significantly
- Information is received that casts doubt on the reason for the absence or validity of the previous certification

If recertification is requested due to the number and/or nature of the absences, the employee's FMLA attendance record may be included, and the health care provider may be asked if the serious health condition and need for leave is consistent with the employee's absences. **See Form _____ Letter.**

It is the employee's responsibility to provide the completed recertification within 15 calendar days.

A second or third opinion cannot be requested on a recertification.

Additional provisions to note:

At the time the medical certification is requested for the employee's serious health condition, employees must be notified of the requirement to submit a fitness-for-duty certification upon their return to work and provided with:

- **Form 3, Intent to Return and Fitness for Duty/Medical Release Form**
- A list of essential functions of the job

If the medical certification is still incomplete or insufficient, after the 7-day "opportunity to cure," contact Human Resources Administration to discuss additional options which may include contacting the health care provider for clarification and/or authentication of the certification.

In certain circumstances, a second and third opinion from a health care provider may be requested, and the department pays the cost of the additional opinion. Contact Human Resources Administration if you wish to explore this option. The cost of obtaining any second or third opinion must be paid by the City.

Records and documents relating to medical certifications, re-certifications, or medical histories of employees or employee family members, must be kept in locked files separate from personnel files and treated as confidential medical records.

Intermittent or Reduced Schedule FMLA Leave

Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason.

Reduced schedule leave reduces the employee's usual number of hours work per day or per week.

Intermittent or reduced schedule leave *must be* granted if medically necessary or due to a qualifying exigency.

Intermittent or reduced schedule leave *may be* granted if taken following the birth or placement of a healthy child and approved by the supervisor.

Employees must *consult with their supervisors* and make a reasonable effort to schedule intermittent leave for planned medical treatment or appointments so it does not disrupt operations.



Allow only as much FMLA as needed—an entire day off usually is not necessary for a doctor appointment. Adequate time off for the appointment and travel to the appointment must be provided, and employees should be required to return to work immediately after the appointment when appropriate.

Additional provisions to note:

Departments may place employees who are on an intermittent leave or a reduced work schedule for planned medical treatment or appointments in another position with equivalent pay and benefits which better accommodates recurring absences than the employee's regular position. This placement is considered to be a temporary transfer and should be discussed with Human Resources Administration.

Unless the reduced work schedule is specifically identified by the health care provider, the supervisor has the discretion to designate the reduced schedule of hours or days of the week to meet business needs, e.g., if the employee is limited to working six hours a day, the City can designate the work schedule as 8 a.m. to 2 p.m.

Employees must follow all attendance and call-in procedures. Additionally, employees are required to submit any necessary paper work and other information to demonstrate the leave is related to FMLA. A failure to provide this information within two days from the return of the absence will result in the absence not being considered related to the FMLA leave and the employee will not be allowed to use other paid time off for the absence.

Calculating and Recording FMLA Leave

An eligible employee may take up to 12 workweeks (480 hours) of leave during a rolling 12-month period.

Employees who record their hours worked and time off on paper time sheets should also record time off taken for FMLA leave, whether paid or unpaid, on the [FMLA Tracking Sheet](#). Employees must designate when time off is related to previously granted intermittent FMLA.

To determine the amount of leave taken by an employee on FMLA, the following days (hours) are counted:

- The employee's scheduled shift, including regularly scheduled overtime
- Holidays that occur within a week if the employee is on FMLA the entire week
- Holidays that the employee was scheduled or expected to work

Paid or Unpaid FMLA Leave

For a serious health condition of the employee all sick, vacation and bonus leave must be used *concurrently* with the 12-week FMLA leave before any unpaid time can be taken, including any paid time off accrued during the FMLA leave. This applies to any FMLA absence, including a leave that is taken intermittently or through a reduced schedule.

For a serious health condition related to a family member, the employee must use all accrued vacation and bonus leave concurrently with the 12-week FMLA leave. After that time is exhausted an employee may use up to 10 sick days per calendar year as part of the FMLA leave. Once the 10 sick days have been exhausted the remainder the FMLA leave will be unpaid.

Additional provisions to note:

If an FMLA-eligible employee is absent for an FMLA qualifying reason and does not provide the requested medical certification, you should not approve the use of paid time off for the absence.

If the employee will be absent without pay for more than 30 calendar days, with the exception of medical leave (PM-66-03), pursuant to PM-66-01, the employee's date of employment shall be adjusted to exclude the total period of time the employee was on leave of absence without pay. It is the responsibility of the employee's Division to notify the Director of Human Resources or designee, in writing immediately upon the employee's return to work from leave of absence without pay that exceeds 30 calendar days so the employee's date of employment can be adjusted.

Reinstatement Upon Return from FMLA Leave

An employee who is returning from an approved FMLA absence will be returned to the same position held at the time the leave began or to an equivalent position.

An equivalent position is one with equivalent benefits, pay, and other terms and conditions of employment, including the same shift or work schedule and a geographically proximate work site. Consult with Human Resources Administration if considering placing the employee in an equivalent position.

In certain circumstances prior to returning to work, an employee on FMLA leave for his or her own serious health condition may be required to provide a fitness-for-duty certification indicating the employee is fit to resume work and perform the essential functions of the job.

At the time the FMLA leave is requested, employees must be notified of the requirement to submit a fitness-for-duty certification upon their return to work and provided with:

- [Form 3 Intent to Return and Fitness for Duty/Medical Release Form](#)
- A list of essential functions of the job

If appropriate notice is provided, an employee who does not provide a fitness-for-duty certification is not entitled to reinstatement under FMLA.

The cost of acquiring a fitness-for-duty certification (if any) is paid by the employee, and the employee is not entitled to be paid for time or travel to obtain the certification.

Additional provisions to note:

Employees on FMLA leave whose positions are affected by a reduction in force or reassignment, may not be reinstated if it can be demonstrated the reduction in force or reassignment would have occurred had the employee been working and not on FMLA leave.

If the employee is released to return to work with restrictions that prevent him/her from performing the essential functions of the position, contact Human Resources Work Place Safety and Compliance Department.

Key employees may be an exception to the reinstatement rule if reinstatement would result in “substantial and grievous economic injury” to the City. Once approved by Human Resources Administration, the Division must inform the key employee—before the FMLA leave begins—that reinstatement might not be available when he or she is ready to return to work.

Department Responsibilities

It is the department's responsibility to designate any absence that meets the requirements of the FMLA as family medical leave. An employee may request a leave or may provide enough information to make the department aware that an absence may be eligible for FMLA.

Post information about the FMLA in conspicuous places within the department. Posters are available at: <http://www.dol.gov/whd/regs/compliance/posters/fmla.htm>.

Even if the employee does not request FMLA, if a department is aware that the reason for an absence qualifies under FMLA, the absence must be designated as FMLA leave and prompt notice given to the employee. As soon as the department is aware that the employee has been absent for 3 consecutive days, the department must send an employee prompt notice of his rights and obligations under FMLA. **A copy FMLA leave Notice of Designation, Request & Approval FMLA Form 1A.**

Establish and communicate the department's call in procedure which should include:

- when the employee must call in; how soon before or after the shift begins
- who must call in; employee only or other family member
- information that must be provided when calling in (don't accept simply "FMLA;" it is the department's responsibility—not the employee's—to determine if an absence qualifies for FMLA).

Enforce the call in procedure consistently between FMLA and non-FMLA absences.

An employee's rights to FMLA may be denied or delayed only for the following reasons:

- timely advance notice of foreseeable leave is not given
- timely submission of required and sufficient medical certification is not made by the employee
- the employee fails to provide required fitness to return to work certification
- the employee expresses an intention not to return to work
- the employee fraudulently requests or obtains FMLA

Additional provisions to note:

An FMLA leave should start immediately if an FMLA-eligible employee who is absent due to an On the Job Injury for more than 3 consecutive days or is treated by a health care provider more than once for the condition.

If the department fails to designate an employee's eligible absence as FMLA it may only retroactively designate the absence as FMLA leave if:

- the employee has been given notice, and,
- the retroactive designation does not harm the employee

The department and employee may also mutually agree to retroactively designate the absence as FMLA.

The ability to retroactively designate an employee's absence as FMLA, does not apply to absences in which the employee did not give the appropriate amount of notice or did not follow the department's call-in procedure.

Do's for the manager or supervisor:

Ask appropriate questions about the reasons for the employee's time off (when an employee seeks leave for the first time for an FMLA-qualifying reason, the employee need not expressly assert rights under the FMLA or even mention the FMLA).

Provide the employee with the appropriate FMLA forms and follow the FMLA procedures for processing the FMLA and handling subsequent absences (see appendix page 22 for a quick reference checklist).

Recognize when requested time off, whether paid or unpaid, can be counted as an FMLA absence and promptly inform the employee.

Track FMLA time and when requested, inform the employee of the number of hours used and the number remaining.

Require employees to properly track and document FMLA related leave.



Don'ts for the manager or supervisor:

Interfere with, restrain, or deny the exercise of (or attempts to exercise) any rights provided by the FMLA.

Discourage an employee from using FMLA leave or manipulate circumstances related to eligibility.

Discharge or in any other way discriminate against a person for opposing or complaining about any unlawful practice under the Act, including considering the use of FMLA as a negative factor in employment actions such as hiring, promotions or disciplinary actions.

Employee Responsibilities

Employees must provide at least 30 days advance notice of an anticipated FMLA leave. As a general rule, a 30-day notice shall be required in cases involving:

- birth, foster care, or adoption of a child
- planned medical treatment for an employee or family member with a serious health condition

If employees do not give proper notice of a clearly foreseeable leave, departments can delay the leave for up to 30 days after receiving notice of the need for FMLA leave.

In cases where 30 days' notice is not practical, an employee must provide notice as soon as practicable—the same day or next business day.

Employees must follow the department's procedures for requesting leave and calling in absences and provide sufficient information to allow the department to determine whether the leave request and absence qualifies for FMLA. Failure to do so may result in the time not being approved.

Employees must *consult with their supervisors* and make a reasonable effort to schedule intermittent leave for planned medical treatment or appointments so it does not disrupt operations.

If an employee will be in an unpaid status for more than 30 calendar days, the employee must contact Human Resources Benefits Office to make arrangements for payment of health care premiums and other optional benefits that have been elected. If the employee fails to make arrangements the benefits are subject to cancellation. If an employee fails to return after an FMLA leave, the employee may be responsible for all health care premiums paid by the City while the employee was on FMLA.

When an employee seeks leave due to a qualifying reason for which the employer has previously provided the employee FMLA protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

If an employee simply calls in sick; does not follow the department's call-in procedure; or does not provide sufficient information, the time off need not be designated as FMLA.

Employees must cooperate throughout the FMLA process or risk having their FMLA request delayed or denied including:

- Giving the appropriate amount of notice of the need for FMLA.
- Providing a complete and sufficient medical certification, if requested.
- Responding to questions to determine whether an absence qualifies for FMLA.
- Following the department's call-in procedure.
- Providing intent to return and fitness for duty medical release, if requested.
- Performing the essential functions of the job with or without reasonable accommodations.

Qualifying Exigency

An eligible employee may take FMLA leave while his/her spouse, child, or parent is a covered military member on covered active duty or called to covered active duty provided:

1. The service member is either:
 - a. A member of the Reserve Component (Army National Guard, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard, Air Force Reserve, Coast Guard Reserve)
 - b. An active or retired member of the regular Armed Forces
2. The call to active duty is a Federal—not State—action
3. The qualifying exigency is for one or more of the following reasons:
 - a. Short notice deployment
 - i. Notice of or call to active duty of seven days or less
 - ii. Leave can be taken for up to seven calendar days from date of notice of or call to active duty
 - b. Attendance at military events and related activities such as:
 - i. Official ceremonies
 - ii. Family support of assistance programs
 - iii. Informational briefings
 - c. Childcare and school activities
 - i. Arrange for alternative childcare
 - ii. Provide childcare on an urgent, immediate need basis
 - iii. Enroll in or transfer to a new school or day care facility
 - iv. Attend meetings with school officials due to circumstances arising out of the notice of or call to active duty
 - d. Financial and legal arrangements
 - i. Make or update arrangements to address the military member's absence
 - ii. Act as the military member's representative to obtain, arrange, or appeal military service benefits
 - e. Attend counseling
 - f. Rest and recuperation
 - i. Spend time with a military member on short-term, temporary rest and recuperation leave
 - ii. Leave can be taken for up to five days for each instance
 - g. Post-deployment activities

- i. Attendance at arrival ceremonies, reintegration briefings, or other official ceremonies within 90 days of end of active duty
 - ii. Address issues arising from the death of the military member
- h. Additional activities
 - i. Address other events arising out of notice of or call to active duty
 - ii. Requires agreement between employee and supervisor on qualification, timing, and duration

Additional provisions to note:

The department should provide the employee with a copy of the **DOL form Certification of Qualifying Exigency for Military Family Leave form which can be found at www.dol.gov/whd/forms/WH-384.pdf**. The completed form along with the documentation the employee provides will be used to determine if the leave request qualifies for FMLA and the length of the leave.

When certification is requested, it is the employee's responsibility to provide timely, complete, and sufficient certification and failure to do so may result in delay or denial of FMLA leave.

Human Resources Administration is responsible for coordinating all requests for leaves taken under this qualifying exigency provision.

Military Caregiver Leave

Military Caregiver Leave is FMLA leave to care for a covered service member who has suffered serious injury or illness in the line of active duty.

A covered service member means a current member of the Armed Forces, National Guard or Reserves who is undergoing medical treatment, recuperation or therapy; is in outpatient status; or is otherwise on the temporary disabled list for a serious illness or injury. A covered service member may also be a veteran who was a member of the Armed Forces, National Guard or Reserves within five years preceding the date on which the veteran undergoes medical treatment, recuperation or therapy.

An eligible employee who is the spouse, domestic partner, child, parent, or next of kin of a covered service member may take up to 26 weeks of FMLA leave during a single 12-month period.

The single 12-month period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends 12 months after that date.

An eligible employee is entitled to a combined total of 26 work weeks of leave for any FMLA-qualifying reason (not 12 + 26).

Contact Human Resources Administration to determine if a qualified family relationship exists.

Additional provisions to note:

The department should provide the employee with a copy of the **DOL Form [Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave](#)** to be completed by the employee and an authorized military health care provider of the covered service member.

The employee may present certain military certifications such as “Invitational Travel Orders” or “Invitational Travel Authorizations” for purposes of certification that must be accepted by the department.

If the certification is incomplete or unclear, the employee is to be given 7 additional calendar days to provide more complete information.

When certification is requested, it is the employee’s responsibility to provide timely, complete, and sufficient certification and failure to do so may result in delay or denial of FMLA leave.

Human Resources Administration, Employee Relations or a person designated by Human Resources Administration, Employee Relations may contact the covered service member’s health care provider for clarification and/or authentication of the medical certification.

Recertification and second or third opinions are not permitted.

