



Medical Certification Process

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with municipal government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other MTAS website material.

Sincerely,

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Medical Certification Process

Reference Number: MTAS-858

Content and Clarification

- Employer representatives responsible for contacting the employee's health care providers *must be an HR professional, leave administrator, health care provider, or management official*. They cannot be the employee's direct supervisor.
- Employers should ask for information required by the certification form *only*.
- *Once the employer has received a complete and sufficient certification, the employer may not request additional information from the health care provider*. However, the employer may use a human resources professional, a leave administrator, another health care provider, or a management official to contact the health care provider to *authenticate or to clarify the certification*. For example, the employer's appropriate representative could ask the health care provider if the information contained on the form was completed or authorized by him or her, or ask questions to clarify the handwriting on the form or the meaning of a response. Under no circumstances may the employee's direct supervisor contact the employee's health care provider. Excerpted from Fact Sheet #28G, U.S. DOL: <http://www.dol.gov/whd/regs/compliance/whdfs28g.pdf> [1]
- The final rule allows the health care provider to give a diagnosis of the patient's health condition as part of the certification, but does not require this.
- The DOL may have separate forms available and required for applicable/eligible family members. Refer to those forms as necessary.

Medical Certification and Timing

- Employers may request a new medical certification each leave year for health conditions that last more than one year.
- Employers may request a re-certification of an on-going condition every six months in conjunction with an absence. (Except when a minimum duration of incapacity has been specified in the certification, in which case recertification generally may not be required until that duration has passed). Previously, under the law, an employer could require re-certification no more than every 30 days.
- Employers now have five (versus two) days after the employee provides notice to request that an employee furnish a medical certification. (NOTE: There are now two separate medical certification forms – one for the employee's own serious health issues and one for the employee's family member. To find updated forms and other valuable information, including FMLA posters, visit <http://www.dol.gov/whd/fmla/index.htm> [2].

Fitness for Duty Certification

Restrictions still apply for those employers requesting fitness for duty certificates for employees on intermittent FML. Under the legislation, employers are able to request a fitness for duty certificate 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."

Waiver of Rights

Under updated rules, employees may elect to voluntarily settle their FMLA claims without the interference of court or DOL. Prospective waivers of FMLA are prohibited. Employees cannot waive, nor may employers induce employees to waive, their rights under the FMLA.

Links:

[1] <http://www.dol.gov/whd/regs/compliance/whdfs28g.pdf>

[2] <http://www.dol.gov/whd/fmla/index.htm>

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