



Be Wary of Too-Frequent FMLA Medical Recertification

News

3.03.15

Scott Fanning was quoted in *SHRM* on March 3, 2015. The article “Be Wary of Too-Frequent FMLA Medical Recertification” discussed how medical recertification request can sometimes be more trouble than it is worth, according to management attorneys.

Under the Family and Medical Leave Act (FMLA), an employer may request recertification for conditions that are expected to last 30 days or less no more often than every 30 days, noted Scott. “For conditions that are certified as having a minimum duration of more than 30 days, the employer must wait to request a recertification until the specified period has passed, except that in all cases the employer may request recertification every six months in connection with an absence by the employee.”

He noted that there are exceptions to the rules. For example, “An employer can request recertification in less than 30 days if the employee requests an extension of leave, the circumstances described in the previous certification have changed significantly, or the employer receives information that casts doubt upon the employee’s stated reason for the absence or the continuing validity of the certification,” he said. “Additionally, employers may request a new medical certification each leave year for medical conditions that last longer than one year.”

But Scott said that, while requesting recertification is permitted after six months in connection with an absence, “we generally recommend that employers do not automatically request such certification if the original medical certification is still valid and there are not any suspicious circumstances.”

Why? He explained that “if the original certification was valid for eight months and the employee has not been abusing the intermittent leave, there is little benefit to requiring the employee to get a further certification for the remaining two months. Indeed, the employee may even come back with a longer certification or claim of interference and retaliation. The added risk of dealing with an interference or retaliation claim, however minimal or unjustified, generally outweighs the benefit in this situation.”

“This information often comes to employers’ attention through complaints from other co-workers,” Fanning said. “Often, these co-workers are frustrated with having to pick up shifts and assignments for these FMLA abusers. Some FMLA abusers will even brag to their co-workers about their exploits, or the co-workers will see the FMLA abuser’s activities on social media.”

To read the full article, please visit [SHRM](#).

Please reach out to our [Media team](#) for any news inquiries.

Related People



Scott Fanning
Partner
312.346.8061
[Email](#)