

What should we do when an employee provides conflicting FMLA certification notes?

Q. An employee seeking FMLA leave presented medical certification from her doctor that stated that her medical condition didn't prevent her from performing the essential functions of her job. A few days later, she presented a second form that stated the opposite. Can we hold her to the first certification, or do we have to accept the second form and grant FMLA leave?

A. Under the FMLA's regulations, an employee is required to deliver a medical certification in a timely manner. When leave is unforeseeable, an employer must give the employee at least 15 calendar days to provide the requested certification, and more time if it is not practicable under the circumstances.

If an employee fails to provide a medical certification on time, the employer may delay the FMLA leave. If the employee never produces the certification, the FMLA cannot cover the leave.

On the other hand, if the employer terminates the employee before giving the full 15-day period to provide a certification, the employer has violated the FMLA.

While the law is muddled on your specific question, the safest course of action would be to accept the second certification and grant the FMLA leave.