

Recertification request won't guarantee FMLA extension

By law, employees can take up to 12 weeks of FMLA leave each year. Your organization can, if it chooses, grant an extension.

But make sure it's clear to employees when you have and haven't granted such an extension. Simply requesting more details and an FMLA recertification form don't equal your automatic approval of the FMLA extension. But an employee may see it that way (as in the following case).

Recent case: Amy Johnson worked for Vintage Pharmaceuticals when she learned that she was pregnant. Due to complications, she quickly ate through her 12 weeks' FMLA leave.

Johnson asked for more FMLA leave time, so Vintage told her to fill out an FMLA request form and obtain a medical recertification from her doctors. This, she argued, amounted to an enforceable guarantee that the company would extend her FMLA leave beyond 12 weeks.

But the 11th Circuit Appeals Court rejected her claim. While the company could offer more time off, simply asking Johnson to fill out an FMLA form didn't guarantee her the leave or the chance to sue under the FMLA. At most, she might have a state law claim if she relied on the company's time-off offer. (*Johnson v. Vintage Pharmaceuticals*, No. 05-13850, 11th Cir., 2006)