

# 4 FMLA strategy tips: How to certify intermittent leave

Managing FMLA intermittent leave can be vexing, but employers do have some tools to combat leave abuse. One of the most important is FMLA certification.

As with FMLA leave taken in one block, employees who request FMLA intermittent leave must give you notice—at least 30 days in advance when the need is foreseeable. When it's not, they must notify you "as soon as practicable."

## Certify and schedule the leave

Don't accept intermittent leave requests at face value. The FMLA allows you to demand certification from a doctor that an employee needs FMLA leave. You can request new medical certification from the employee at the start of each FMLA year. You're also entitled to ask for a second or third opinion (at your expense), before granting FMLA leave.

When employees have chronic conditions and certifications that call for intermittent leave, attempt to work out leave schedules as far in advance as possible. It's legal to try to schedule FMLA-related absences, but you can't deny them.

Immediately nail down the expected frequency and duration of FMLA intermittent leave. Demand a medical provider's estimate of how often the employee will need time off. You also can wait until the provider gives you that estimate to approve intermittent leave.

Here are four tips on certifying FMLA intermittent leave requests:

**1. Ask about the specific condition.** Medical certification must relate only to the serious health condition that is causing the leave. Don't ask about the employee's general health or other conditions.

**2. Allow time to respond.** After you request FMLA certification, give employees at least 15 calendar days to submit the paperwork. If the employee's medical certification is incomplete or insufficient, specify in writing what information is lacking. Allow seven days to cure the deficiency.

**3. Investigate the certification** if you doubt the need for leave. Under the updated FMLA regulations, you can directly contact the employee's physician to clarify the medical certification. Who can make that call? An HR professional, a leave administrator (including third-party administrators) or a management official, but not the employee's direct supervisor.

**4. Require (and pay for) a second opinion** if you're still not convinced. Use an independent doctor that you select, not a doctor who works for your organization. If the two opinions conflict, you can pay for a third and final, binding medical opinion.

## Use calendar to manage FMLA intermittent leave

Employees who take FMLA intermittent leave can wreak havoc with work schedules, because their conditions can flare up at any time. But there are legal ways to curtail intermittent leave.

One of the easiest: Use the calendar-year method to set FMLA leave eligibility.

*Here's how it works:* Sometime during the calendar year, an employee submits documentation showing she will need FMLA intermittent leave for a chronic condition. If she is eligible for leave at that time, she can take up to 12 weeks of intermittent leave until the end of the calendar year. Then the process starts again.

If, on Jan. 1, she hasn't worked 1,250 hours in the preceding 12 months, she's no longer eligible—and won't be eligible again until she hits 1,250 hours.