

# What is the protocol on asking for doctors' notes?

*Updated April 8, 2020*

Employment lawyer, Nancy Delogu, provides answers to reader's questions about doctor's notes for work.

**Q. When an employee calls off sick for more than one day, is there a minimum amount of days off required before an employer can ask for a doctor's note? Can we ask the specific reason for the absence? — Joe, Pennsylvania**

**A.** No, there is no minimum or even generally accepted minimum number of days an employer must wait before it asks an employee to provide documentation that he or she missed work because of illness.

Most employer policies do not require a doctor's note when an employee takes a sick day because so few of us actually consult a physician when we are ill with a cold or the flu. That said, when an employer becomes suspicious that an employee may be abusing its sick leave policy, individual employees may be directed to bring a doctor's note to excuse their absences.

If the employee calls off sick for three or more days, many employers send FMLA paperwork to the employee because one definition of "serious health condition" under that law is that the individual is unable to work for three or more days because of one's own or a covered family member's serious health condition. If the employee does not complete the paperwork, the leave may not be considered job-protected.

Remember, you are limited in what you can ask employees about medical conditions if you are gathering information under the FMLA. ([Learn how](#) to legally collect FMLA medical info.)

Finally, keep in mind that in an increasing number of jurisdictions, employees may be entitled to paid sick leave to care not only for themselves but for family members who fall ill. In that case, you are looking to gather evidence that the family member was sick.

**Q: "Can doctors' notes be turned down? Our employee went to the doctor and was taken out of work for medical reasons. The employee received points per our attendance policy for those two days, but neglected to bring a note supporting the medical leave. The employee called the doctor's office and the doctor faxed over the medical certification supporting the absences as medical. The supervisor does not want to accept the medical note, though, because it was not submitted when the employee returned to work. We have guidelines that state if a medical note is not turned in when an employee returns to work, the note will not be accepted. Are there any legal ramifications?" - Anonymous, Virginia**

**A:** Yes, there could be legal ramifications. If the employee has a serious health condition that would entitle him to time off from work under the Family and Medical Leave Act (FMLA), then he should as an initial matter have 15 days—and sometimes more—to complete medical certification documentation showing that the time away from work should be excused. (Similarly, if the employee is certified to take intermittent medical leave, asking

for a note each time he needs to be absent to care for that condition could also be construed as interference with his rights under that law.) If, on the other hand, the absence is not protected by the FMLA (or one of the growing number of state and local sick leave laws), then the employer may be able to treat the absence as unexcused because the note was turned in late.

The policy as written sounds difficult to implement—not everyone who is ill is in a position to have a health care provider complete a note confirming an absence was medically appropriate within 48 hours, so some flexibility may be helpful. Note that if your sick leave policy imposes “points” for failing to provide reasonable notice of an absence or tardiness caused by illness, that policy can be invoked even if the individual must miss work due to disability or other serious health condition, provided the rule does not penalize those who are medically unable to provide the required notice.

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