

May the employer reject my medical opinion?

The employer may require a second opinion, at the employer's expense. If your opinion and that of the second physician differ, the employer may require a third opinion, which is binding.

May the employer contact me about what I put on the form?

Generally, no. The employer may ask a health care professional not affiliated with the employer to contact you to clarify items on the form or to verify that you completed it. This health care professional may not contact you without the worker's permission, however.

In those rare cases where a worker on FMLA is also on workers' compensation, state law governs. If state law allows an employer to directly contact a worker's physician in workers' comp cases, then the employer may do so if a worker is on both workers' comp and FMLA at the same time.

What should I do if I have other questions about FMLA?

Contact your local office of the Department of Labor, Wage and Hour Division. Or, try their website: www.dol.gov



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Understanding the Family and Medical Leave Act



A Guide for Physicians and Other Health Care Professionals

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The Family and Medical Leave Act (FMLA) was passed in 1993 to protect workers from having to make a terrible choice: should they attend to their own medical needs and those of family members, or should they keep their jobs?

Recognizing that most of us have to balance the demands of work and family, Congress provided workers with up to 12 weeks of unpaid leave to deal with certain medical emergencies. In the past 10 years, 35 million workers have used some portion of this job-protected leave.

When the FMLA was passed, however, it made physicians and health care professionals the centerpiece of the process – without consulting them and without explaining just what they were expected to do.

Here's help: this pamphlet provides a quick introduction to the FMLA and to the health care professional's responsibilities under the Act.

Workplace Realities

First, it is important for physicians and health care professionals to understand that many workers – your patients – have no guarantee of sick leave while on the job. While many white-collar workers have a certain number of paid sick days each year, many blue-collar and service workers have no such days, paid or unpaid.



The FMLA was passed in 1993 to protect workers from having to choose between their jobs and their health.

Second, many employers have implemented “no-fault” attendance policies, in which an absence for any reason will be counted as an “occurrence”. After a certain number of “occurrences,” the employee may be suspended or even discharged. Unfortunately, a person with a chronic health condition can rack up a number of occurrences by visiting you, the doctor.

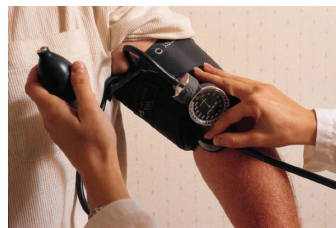
The law prohibits employers from counting FMLA leave under no-fault policies, but a physician must first certify that the patient has a “serious health condition” as defined by the law. This is why it is so important that you complete and return the FMLA certification form your patient gives you. Otherwise, your patient may be denied FMLA leave, and may ultimately lose a job.

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What protections does the FMLA provide?

The FMLA allows a worker to take up to 12 weeks of job-protected, unpaid leave in these circumstances:

1. Birth, adoption, or placement of a child
2. To care for a seriously-ill spouse, child or parent
3. To cope with the employee’s own serious health condition



Not all workers can take advantage of FMLA.

While on FMLA leave, the worker is entitled to retain health insurance and all rights accrued prior to starting the leave.

What workers are eligible to use FMLA?

Not all workers can take advantage of the law: in fact, only about 60 percent of American workers are eligible. To use FMLA, a worker must

- Work for an employer with more than 50 employees
- Have worked 12 months for that employer
- Have worked 1250 hours in the 12 months preceding the leave
- Work within 75 miles of 50 employees.

Thus, new hires, part-timers, workers at small companies, and those who work in isolated locations may be ineligible to use FMLA.

Similarly, only certain family members can qualify a worker for FMLA. Workers can take FMLA for their own serious conditions, or for those of a spouse, child under age 18, or parent. FMLA does not cover the medical emergencies of adult children, siblings, in-laws, grandparents, or others who may be dependent upon the worker for support.

What qualifies as a “serious health condition”?

The law identifies six broad categories of health conditions:

1. **In-patient care.** Patients who are admitted and spend one night in a medical care facility are covered by the law for their hospital stay and for all treatment that results from that stay.
2. **Illness or injury lasting more than three consecutive days.** An acute illness or injury is covered if the patient is incapacitated for more than three days and has continuing medical treatment. This treatment can be either two visits to the doctor, or one visit with supervised treatment such as therapy or a course of prescription medication. The consecutive days do not have to be work-days.



What qualifies as a “serious health condition”?

As you can imagine, this is one of the more controversial sections of the law, because most of us suffer through one or more viruses or “bugs” each year. The regulations specifically exclude such maladies as the common cold, upset stomachs, earaches, headaches (other than migraine), and the flu -- unless the condition develops into something serious, or unless that particular patient could suffer severe consequences from one of these illnesses.

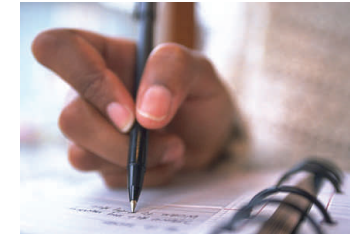
3. **Pregnancy.** FMLA covers childbirth, prenatal visits, and periods of incapacity during pregnancy.
4. **Chronic serious health condition.** Conditions such as cancer, arthritis, asthma, diabetes, and migraine headaches are included in this category. FMLA covers any period of incapacity caused by a chronic serious condition.
5. **Long-term or permanent disability.** Conditions such as terminal illnesses are covered under this category.
6. **Conditions requiring multiple treatments.** These conditions require multiple medical treatments to prevent an incapacity greater than three days. Physical therapy, chemotherapy and dialysis fall under this category.

The six categories above correspond to the six categories on Form WH-380, Certification of Health Care Provider, which is used by many employers.

Does FMLA leave have to be taken all at once?

FMLA leave can be taken in a large block, such as 10 or 12 weeks, or intermittently, in amounts of an hour or a day. Any leave that is discontinuous – that is, the employee returns to work after a period of leave, however long – is considered intermittent. The employer must allow the worker to take leave intermittently if the physician certifies that it is medically necessary to do so.

Once the physician certifies that a patient has a condition requiring intermittent leave, the regulations allow a worker to take the leave without visiting a doctor each time to verify that the patient was incapacitated.



Your most important function as a physician is to complete and return the Form WH-380.

So, what do I have to do as a doctor?

Your most important function as a physician is to complete and return the Form WH-380. This 2-page form requires you to include medical facts, an estimate of how long a condition might last, and the time an employee might need to be away from work. Employers may substitute their own

version of the certification form, but they may not ask any questions that are not on this form.

Some suggestions for making this task a little less onerous:

1. Complete the form while sitting with the worker. He or she can answer questions about the nature of the work, and may have some ideas about how to complete this form to satisfy his/her employer.
2. The regulations allow an employer to request recertification for pregnancy, chronic conditions, and long-term permanent disability every 30 days, unless the physician specifies that the condition will last longer than 30 days. Be specific when stating duration: “June, 2004” and “10 months” are preferable to phrases like “life.” You don’t want to complete this form every month!
3. Keep a completed copy of this form in the patient’s folder for reference.
4. After obtaining the patient’s permission to release the information, fax the completed paperwork to the employer.