



Julie Athey, J.D.
Director of Compliance

Julie assists with a variety of compliance issues related to employee benefits and the ACA, ERISA and other federal and state regulations.

Employee Benefits – Question of the Month

July 2020

Q: One of our employees was on FMLA from May through June 2020 to take care of her husband after surgery. Since returning to work, she has struggled with anxiety related to COVID-19 and has had to leave early or called in sick most days. It became clear that she needed additional leave, so I gave her a new medical certification form for her doctor to fill out.

I just received the completed form and have concerns. To me, it is contradicting itself. In one place, it says the employee can't perform any of her job functions due to anxiety surrounding the COVID-19 pandemic. However, on the next page, it says she needs leave for only one day per week. How should I handle this?

A: I agree that the two statements in the certification do seem to contradict each other. I would start by verifying with the employee how much time off she's asking for, if there's any doubt. If she wants only one day per week, the certification is probably sufficient. If she is asking for continuous, full-time leave, then the certification is more problematic, and you might want to consider seeking clarification from the employee or her doctor.

There are rules for seeking such clarification. Any time there are problems with a medical certification, FMLA regulations give employees seven additional days to fix them (unless doing so would not be practicable under the circumstances despite the employee's diligent good faith efforts). The first step is to notify the employee that the certification is incomplete or insufficient, explaining in writing what additional information is necessary to correct the problem. Note:

- A certification is considered **incomplete** if the employer receives a certification, but one or more of the applicable entries have not been completed.
- A certification is considered **insufficient** if the employer receives a complete certification, but the information provided is vague, ambiguous or non-responsive.

If the employee doesn't resolve the contradictions in the certification within the time allowed, then you can contact the doctor directly if you want.

Finally, because the doctor specifically attributes the employee's anxiety to COVID-19, she likely qualifies for up to two weeks (80 hours) of Emergency Paid Sick Leave (EPSL). Keep in mind that EPSL can be used intermittently, so she may be able to spread it out over a period of time.

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