


The Family and Medical Leave Act (FMLA) for FMLA Administrators
- Policy Overview -

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 For the audio portion of this presentation, call 866-394-9515 and enter passcode 9069825.

2009

Agenda


- FMLA
 - Review FMLA Policy and Processes
 - Background Information
 - Eligibility
 - Qualifying Reasons
 - Required Employee Notice
 - Required Employer Notices
 - Certifications
 - Clarification and Authentication
 - Recent Changes to FMLA
- Questions

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>




Background Information – Federal Regulations



- Signed into law – February 5, 1993
- Amended by National Defense Authorization Act – January 28, 2008
- Amended by new regulations – January 16, 2009

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>




Background Information – State of Iowa

- Effective Dates
 - Medical FMLA
 - August 5, 1993 – Non-contract
 - February 5, 1994 – Contract-covered
 - Military Family Leave
 - January 28, 2008 – Military Caregiver
 - January 16, 2009 – Qualifying Exigency

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Eligibility for FMLA

- 12 months of employment during past seven years
 - Need not be consecutive
 - Active military service by Guard and Reserve counts toward 12 months of employment
- 1,250 hours worked
 - 12 months immediately preceding the date leave is to begin
 - Hours actually worked – not vacation, sick or comp
 - Count hours employee would have worked if Guard or Reserve
- Employees not initially eligible become eligible once they meet above criteria

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Leave Entitlement

- Job protected leave
 - Continuous, intermittent or reduced schedule leave
 - Paid or unpaid
 - State of Iowa requires use of appropriate paid leave during periods of FMLA leave
- Up to 12 weeks per fiscal year for medical and/or qualifying exigency leave
 - If both spouses employed by State, 12 weeks of leave is shared for birth, adoption, foster care, or to care for the employee's parent with a serious health condition
- Up to 26 weeks per 12 month period for military caregiver leave

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Leave Entitlement

- Provides for continuation of health insurance while employee on FMLA, whether paid or unpaid
- Employee can be required to reimburse state share for health insurance if employee does not return to work for a reason other than
 - A condition that would entitle the employee to FMLA leave, or
 - Other circumstances beyond the employee's control

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Qualifying Reasons for FMLA Leave

- Birth of a son or daughter and to care for the newborn child
 - Includes prenatal care and appointments
- Placement of a son or daughter for adoption or foster care
 - Can include time prior to placement, if any
- Care for the employee's spouse, son, daughter or parent with a serious health condition
- Serious health condition that makes the employee unable to perform the functions of the employee's job
- Qualifying exigency for covered military member
- Care for ill or injured covered servicemember
(Military leave not covered in this presentation)

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Serious Health Condition

- Illness, injury, impairment, or physical or mental condition that involves
 - Inpatient care, or
 - Continuing treatment by a health care provider
- Inpatient means overnight stay in
 - Hospital
 - Hospice
 - Residential care facility
 - Includes any subsequent treatment in connection with such inpatient care

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Continuing Treatment

- Incapacity of more than 3 calendar days and in-person visit to health care provider that also involves
 - Treatment two or more times by health care provider within 30 days of the first day of incapacity, or
 - Treatment by health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of a health care provider
 - First in-person visit – within 7 days of the first day of incapacity
 - Health care provider determines need for additional treatment visits or regimen of continuing treatment

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Continuing Treatment

- Pregnancy or prenatal care
 - Any period of incapacity due to pregnancy or for prenatal care
- Chronic conditions
 - Require periodic visits for treatment by health care provider
 - Two or more visits per year
 - Continue over extended period of time
 - May cause episodic rather than continuing period of incapacity
 - Asthma, diabetes, epilepsy, etc.

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Continuing Treatment

- Permanent or long-term conditions
 - Alzheimer's, severe stroke, terminal stages of a disease
- Conditions requiring multiple treatments
 - Restorative surgery after accident or other injury
 - Condition that would likely result in period of incapacity of more than three days in the absence of medical care

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Polling Question

- Is the presentation moving
 - Too fast?
 - Too slow?
 - Just right?

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Employee and Employer Notice Requirements

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Employee Notice Requirements Application & Intent to Return to Work Form CFN 552-0599 R3/09

- First section completed by employee and Personnel Assistant
- Second section completed by employee
- Third section signed by employee, supervisor and Personnel Assistant
 - Authorizes contact with health care provider and states intent to return to work

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Employee Notice Requirements

- Initial notification of need for absence can be oral or in writing
 - Employee must give enough explanation to allow employer to determine if leave is FMLA-qualifying
 - Stating that he or she is sick not sufficient to trigger FMLA
- Leave may be denied if the employee fails to adequately explain the reason for leave
- Must inform employer if leave is for a reason for which leave previously taken or certified

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Employee Notice Requirements

- Foreseeable leave
 - At least 30 days notice
 - Birth, adoption, planned medical treatment
- Unforeseeable leave
 - As soon as practicable
 - Same day employee becomes aware
 - Next business day
- If employee does not provide 30 days notice when required, employee must explain upon request

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Employee Notice Requirements

- Must comply with employer's notice requirements for requesting leave
- If not compliant, FMLA may be delayed or denied
- Must follow sick leave policies
 - Failure can be basis for discipline
- Retroactive designation
 - Can be made if employee notifies within two business days of return
 - If notice not made, cannot later assert FMLA protection

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Employer Notices Required

- General Notice – Employee Rights And Responsibilities Under The Family And Medical Leave Act
- Notice of Eligibility and Rights & Responsibilities
- Designation Notice

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Employer Notices Required WHD Publication 1420 Revised January 2009

- General Notice – Employee Rights And Responsibilities Under The Family And Medical Leave Act
 - Provided to each employee when hired
 - Printed and posted for employees that do not have access to computers at work
 - Provided to disabled employees in format that accommodates disability
 - Visible to all job applicants
 - DAS Employment Web site
 - DAS Benefits Web Site

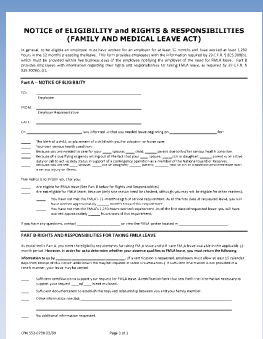


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Employer Notices Required

Notice of Eligibility and Rights & Responsibilities Form CFN 552-0730 03/09



NOTICE OF ELIGIBILITY AND RIGHTS & RESPONSIBILITIES (FAMILY AND MEDICAL LEAVE ACT)

Part A - NOTICE OF ELIGIBILITY

1. To: _____

2. From: _____

3. Date: _____

4. Reason for leave: _____

5. Date of first absence: _____

6. Date of return: _____

7. Reason for absence: _____

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100. Date of return: _____

- Two sections
 - Part A – Notice of Eligibility
 - Part B – Rights and Responsibilities for taking FMLA leave

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Employer Notices Required

Notice of Eligibility and Rights & Responsibilities continued...

- Eligibility information provided to employee within 5 business days of date
 - Employee requests FMLA

OR

- Employer becomes aware that an employee's leave may be FMLA-qualifying

- Eligibility determined at start of first absence for each qualifying reason
- If eligible, eligibility does not change during the leave year

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>




Employer Notices Required

Notice of Eligibility and Rights & Responsibilities continued... Part A

- Date employee notified of need for leave
- Date leave is to begin
- Check reason for leave
- Check appropriate box to inform employee whether or not they are eligible for FMLA leave
 - If eligible, complete Part B
 - If not eligible, check reason
- Sign form and give to employee (keep a copy)
- Provide contact information and poster location

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Employer Notices Required

Notice of Eligibility and Rights & Responsibilities continued... Part B

- Enter date for employee to return information
 - Allow employee at least 15 calendar days from date of notice to provide any requested information
- Check to indicate the information requested
 - Certification (if requested)
 - Serious health condition of employee, family member or servicemember
 - Documentation of family relationship
 - Other information needed, i.e., Qualifying Exigency
 - No additional information

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Employer Notices Required

Notice of Eligibility and Rights & Responsibilities continued...

- Complete employee responsibilities on page two
 - Provide contact person for employee to make any needed insurance premium payments
 - Requirement that employee use appropriate paid leave is already checked
 - If employee is to furnish periodic reports, check and indicate interval of periodic reports
- If leave is to care for a covered servicemember, enter the first day of the single 12-month period
- Once all information received, notify employee within 5 business days whether leave will be counted as FMLA

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Employer Notices Required

Designation Notice
DOL Form WH-382

- Employer responsibility to provide to employee within 5 business days of acquiring sufficient knowledge to determine that absence may be FMLA-covered
- One notice per condition each leave year

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Employer Notices Required

Designation Notice

- Notifies employee that
 - Leave has been designated as FMLA, or
 - Additional information is needed, or
 - Leave will not be designated as FMLA
 - Must state reason for ineligibility
 - FMLA does not apply
 - FMLA has been exhausted
 - May have to issue more than one notice in cases of insufficient information

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Employer Notices Required

Designation Notice continued...

- Must notify employee of amount of leave counted against FMLA entitlement at start of leave
- If not possible, i.e., intermittent leave, provide notice of leave used
 - Upon employee request
 - Not more often than once in a 30 day period
 - Only if leave was taken in the period
- If information changes, i.e., leave entitlement exhausted, written notice to employee required within 5 business days

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Designation of Leave

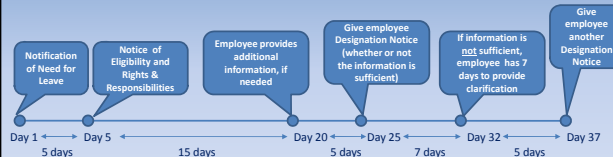
- Employer must designate if reasonable basis to know FMLA applies
 - Employee does not have to agree
- Employer can require certification; if not provided, leave can be denied
- Retroactive designation
 - Employer can retroactively designate
 - Must give employee proper notice
- Cannot require employee to use more FMLA than medically necessary

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FMLA Process Timeline



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Polling Question

- Would you be interested in an iLinc presentation on Military Family Leave?

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Certification

- Employer can require certification for
 - Serious health condition of employee or family member
 - Qualifying exigency
 - Leave to care for ill or injured covered servicemember
- Request in writing
 - When notice of need for leave given
 - Within five business days after leave begins
- If certification requested, must advise employee of consequences of failure to provide
 - Failure to return constitutes failure to provide certification

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Certification

- Employee's responsibility to provide complete and sufficient certification or to authorize health care provider to release complete and sufficient certification to employer
 - Applies to initial certification, recertification, second or third opinion, and fitness for duty
 - Includes any clarifications needed
- Must be returned to employer within 15 calendar days after request
- If incomplete or insufficient
 - Notify employee of deficiency in writing
 - Allow 7 calendar days to cure

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Certification

- Approval is on fiscal year basis
- If need for leave lasts beyond the fiscal year employer can require new medical certification in each subsequent fiscal year
- New certification subject to
 - Authentication and clarification
 - Second and third opinions
- Employee pays for cost of initial certification
- Employer pays for second/third opinions

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Content of Medical Certification

- Separate certification forms for employee and family member's serious health condition
- Information about health care provider
- Information about the start of the condition and its probable duration
- Information about medical facts sufficient to support the need for leave
 - May include symptoms, diagnosis, hospitalization, doctor visits, whether medication has been prescribed, any referrals for evaluation or treatment, or any other regimen of continuing treatment

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Content of Medical Certification

- If leave is for employee:
 - Information sufficient to establish medical necessity for leave
 - Estimate of frequency and duration of episodes of incapacity
 - Information to establish that employee cannot perform essential functions, including
 - Nature of work restrictions
 - Duration of restrictions
 - Includes pregnancy

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Content of Medical Certification

- If leave is for family member:
 - Information sufficient to establish that family member is in need of physical and/or psychological care and
 - Estimate of duration and frequency of leave needed
 - Includes pregnancy
- If intermittent or reduced schedule leave for family member's serious health condition:
 - A statement that such leave is medically necessary
 - Can include assisting in family member's recovery

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Certification of Employee's Serious Health Condition

DOL Form WH-380-E



- Three Section Form
 - Section I: Completed by Employer
 - Employer name & contact
 - Employee's job title & regular work schedule
 - Employee's essential job functions
 - Check if job description attached
 - Section II: Completed by Employee
 - Employee name

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Certification of Employee's Serious Health Condition

Section III: Completed by Health Care Provider

- Provider's name and business address
- Type of practice/medical specialty
- Telephone
- Fax
- Seven questions
 - Medical Facts
 - Amount of Leave Needed

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Certification of Employee's Serious Health Condition

Part A: Medical Facts

- Question 1 – Approximate date condition commenced
 - Probable duration of condition
 - Whether patient admitted to hospital and dates, if yes
 - Date(s) health care provider treated patient
 - If patient will need treatment visits at least twice per year
 - If medication other than over-the-counter was prescribed
 - If patient was referred to other health care provider(s) for evaluation or treatment
 - If yes, nature of treatments and expected duration

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Certification of Employee's Serious Health Condition

Part A: Medical Facts continued...

- Question 2 – Is the medical condition pregnancy?
 - If yes, expected delivery date
- Question 3 – Health care provider uses essential functions or job description to answer questions; if not provided, uses employee's description of job functions
 - Is the employee unable to perform any job functions due to condition?
 - If yes, identify the functions employee is unable to perform

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Certification of Employee's Serious Health Condition

Part A: Medical facts continued...

- Question 4 – Description of any other relevant medical facts related to the condition
 - May include symptoms, diagnosis, or any regimen of continuing treatment such as the use of specialized equipment

Part B: Amount of Leave Needed

- Question 5 – If incapacity will be a continuous period of time due to medical condition, including any time for treatment and recovery
 - If yes, estimate of beginning and ending dates

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Certification of Employee's Serious Health Condition

Part B: Amount of Leave Needed continued...

- Question 6 – If employee will need to attend follow-up treatment appointments or work part-time or reduced schedule
 - If yes, whether treatments or reduced schedule are medically necessary
 - Estimate of part-time or reduced work schedule, if any
 - Number of hours per day & days per week, including from and through dates

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Certification of Employee's Serious Health Condition

Part B: Amount of Leave Needed continued...

- Question 7 – If the condition will cause episodic flare-ups periodically preventing the employee from performing job functions
 - If yes, if it is medically necessary for employee to be absent from work during flare-ups
 - Estimate of the frequency of flare-ups and duration of related incapacity over next six months
- Additional information
- Provider signature and date

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Certification of Family Member's Serious Health Condition DOL Form WH-380-F



- Three Section Form
- Very similar to Certification of Employee's Serious Health Condition with a few exceptions

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Certification of Family Member's Serious Health Condition

- Section I: Does not ask for information about employee's job
- Section II: Employee provides additional information in this section
 - Name of family member
 - Relationship
 - DOB if son or daughter
 - Description of care & estimate of leave
- Section III: Asks about amount of *care* instead of amount of *leave* needed

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Certification of Family Member's Serious Health Condition

Part A: Medical Facts

- On employee's certification, health care provider uses employee's job information to provide information about employee's ability to perform essential functions

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Certification of Family Member's Serious Health Condition

Part B: Amount of *Care* Needed – *May include assistance with basic medical, hygienic, nutritional, safety or transportation needs, or physical or psychological care*

- Asks questions regarding the care or the family member may need and why care is medically necessary, including need treatments, estimate of treatment schedule, dates of scheduled appointments, time needed for each appointment and any recovery period
- If the condition will cause episodic flare-ups, asks if patient needs care during flare-ups, an explanation of care needed by patient, and why such care is necessary

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Types of Serious Health Conditions

Relevant Questions on Health Care Provider Certification Forms

Type of Health Condition	Serious Health Condition
Hospital Care (Inpatient/Overnight Care)	Questions 1, 3, 4, 5, 6
Absence Plus Treatment (Acute or Temporary)	Questions 1, 3, 4, 5, 6
Chronic Conditions	Questions 1, 3, 4, 5, 6, 7
Pregnancy Conditions	Questions 1, 2, 3, 4, 5, 6, 7
Permanent/Long-Term Conditions Requiring Supervision (Conditions for which active treatment would not be effective)	Questions 1, 3, 4, 5, 6, 7
Multiple Treatments (Non-Chronic Conditions)	Questions 1, 3, 4, 5, 6

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Clarification and Authentication

- If certification complete and sufficient, no additional information may be requested
- If incomplete or insufficient, must provide employee opportunity to cure
 - Must state, *in writing*, what is necessary to make complete and sufficient
 - Allow seven calendar days
 - If deficiencies not cured, FMLA may be denied
- If certification not returned, constitutes failure to provide certification

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Clarification and Authentication

- Employer may contact the health care provider to
 - Clarify information on medical certification form
 - Authenticate medical certification form
- Employer contact must be made by
 - Health care professional
 - Human resources professional
 - Leave administrator
 - Management official

As determined by the employing department
- **Under no circumstances may the employee's direct supervisor contact the employee's health care provider**

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Clarification and Authentication

- Limited to contacting health care provider to
 - Understand handwriting on the certification
 - Understand the meaning of a response
 - Request verification that information on the certification form was completed and/or authorized by the health care provider who signed the document
- No additional medical information may be requested
- If FMLA and Workers' Compensation running concurrently, employer may contact Worker's Compensation provider to clarify or authenticate

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Clarification and Authentication

- Employee is responsible to provide complete and sufficient certification and to clarify if necessary
- HIPAA requirements must be satisfied when employee health information is shared with an employer by a HIPAA-covered health care provider
- If employee does not provide a required HIPAA release, leave may be denied.
- If employee does not authorize employer to clarify the certification with the health care provider, and does not otherwise clarify the certification, leave may be denied

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Clarification and Authentication – Second Opinion

- Use when there is reason to doubt validity of certification
 - After clarification and/or authentication
- Employer pays for cost
- Employer chooses provider
 - Cannot be employed by State on regular basis
 - Generally, cannot use provider whose services are contracted for or regularly used
 - Use specialist whenever possible

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Clarification and Authentication – Third Opinion

- If second opinion differs from employee's health care provider, need third opinion
- Employer pays for cost
- Employee and employer must agree on health care provider for third opinion
 - Provide employee with list of providers
 - Use specialist whenever possible
- Final and binding

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Recertification

- No more often than every 30 days
- If minimum duration of condition is more than 30 days, must wait until minimum duration expires before requesting recertification
- Only in connection with an absence, unless
 - Employee requests an extension of leave
 - Circumstances have changed significantly
 - Increased duration of absence
 - Pattern of FMLA use in conjunction with days off
 - Employer receives information that casts doubt

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Recertification

- In all cases, may request recertification every six months in connection with an absence
- Employee must provide within 15 calendar days after employer's request
- Employee obligated to participate and cooperate same as initial certification
- Employer can provide health care provider with record of employee's absences and ask if need for leave is consistent with absence pattern
- Recertification is at employee's expense

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Fitness for Duty

- Employer may require a fitness for duty certification
- Must provide employee with list of essential functions of their job no later than when the Designation Notice is provided to the employee
- May require that fitness for duty specifically address the employee's ability to perform the essential functions of their position
- Fitness for duty form available on DAS benefits Web site

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More information can be found at the DAS Benefits Web site - <http://das.hre.iowa.gov/benefits.html>



Fitness for Duty Form

- Health care provider reviews employee's work schedule and essential functions
- Indicates if employee is able to resume working full-time or less than full-time
- Indicates whether or not patient is able to perform essential functions of position with no restrictions
 - If yes, gives date employee is fully released to return to work
 - If no, gives date the employee is released with restrictions and lists essential functions the employee is unable to perform
 - Provides duration of restrictions – either a date or permanent

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Workers' Compensation

- FMLA runs concurrently with Workers' Compensation
- Employees not required to supplement Workers' Compensation benefits with paid leave
- Employer may offer, but not require, light duty under FMLA
 - If employee refuses light duty, may lose Workers' Compensation benefits
- If unable to return after FMLA exhausted, FMLA job restoration rights do not apply

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Recent Changes to FMLA

- Time that an employee spends working light duty does not count toward the 12 week FMLA entitlement during the leave year
- During periods of FMLA leave, employees must use
 - Accrued compensatory leave
 - Holiday compensatory time
 - Banked holidays
 - No particular order of use

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Recent Changes to FMLA

- Inability to Work Overtime
 - Missed overtime must be counted against an employee's FMLA entitlement if the employee would have been required to work overtime but for their FMLA condition

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Information on the DAS Web Site

At the Benefits FMLA Web site:

<http://das.iowa.gov/hre/benefits/fmla.html>



At the Alphabetic Forms Web site:

<http://das.iowa.gov/forms>



At the Managers and Supervisor Manual, Chapter 6 Web site:

http://das.iowa.gov/ms_manual.html



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Questions



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