



August 24, 2024

Designation Notice

Dear Reader:

The following document was created from the CTAS website (ctas.tennessee.edu). This website is maintained by CTAS staff and seeks to represent the most current information regarding issues relative to Tennessee county government.

We hope this information will be useful to you; reference to it will assist you with many of the questions that will arise in your tenure with county government. However, the *Tennessee Code Annotated* and other relevant laws or regulations should always be consulted before any action is taken based upon the contents of this document.

Please feel free to contact us if you have questions or comments regarding this information or any other CTAS website material.

Sincerely,

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Designation Notice

Reference Number: CTAS-1032

The employer is responsible for designating leave as FMLA leave and for giving the employee notice of the designation. The notice is to be given within five business days after employer has enough information to determine whether the leave is for a FMLA-qualifying reason (e.g., after medical certification has been received), absent extenuating circumstances. Only one designation notice is required for each qualifying FMLA reason in a 12-month period. If the employer determines that the leave does not qualify, the employer must notify the employee of that determination.

If the employer will require a fitness for duty certification before the employee returns to work, this requirement should be included in the designation notice. If this requirement is clearly set out in the employee handbook or other written documents describing the employer's leave policies, written notice is not required with the designation notice but oral notice must be given.

The designation notice must be in writing. The DOL has a prototype Designation Notice to Employee of FMLA Leave (Form WH-382) that can be used for this purpose. The employer is not required to use the DOL form, but it is strongly recommended.

Designating Leave as FMLA Leave. An employee does not need to state rights expressly under the FMLA or even mention the FMLA giving notice of the need for leave, but the employee does need to state a qualifying reason for the leave. It is the employer's responsibility to designate the leave as FMLA leave. The employer's decision to designate leave as FMLA leave must be based solely on information received from the employee, or the employee's spokesperson if the employee is incapacitated, and if additional information is needed the employer should inquire further of the employee or spokesperson (including making a request for any appropriate certifications). When the employer has sufficient knowledge that the leave is being taken for a FMLA-qualifying reason, the employer must designate the leave and the designation notice must be given within five business days, absent extenuating circumstances.

Retroactive Designation. An employer may retroactively designate leave as FMLA leave with appropriate notice to the employee, but only if the employer's failure to designate the leave in a timely manner does not cause harm or injury to the employee. Failure to timely designate leave resulting in harm to the employee can be considered interference with, a restraint of, or denial of an employee's FMLA rights. If it causes harm, the employer could be liable for compensation and benefits lost by reason of the violation, for other actual monetary losses sustained as a direct result, and for appropriate equitable or other relief such as employment, reinstatement, promotion, or other relief tailored to the harm suffered. For example, if an employee took leave to provide care for a parent with a serious health condition believing it would not count against his or her FMLA leave entitlement, and planned to use that FMLA leave later to provide care for a spouse recovering from surgery planned for a later date, the employee may be able to show harm as a result of the employer's failure to designate the leave timely. The employee could establish this by showing that he or she would have arranged alternative caregivers for the parent if the employer had designated the leave timely.

29 C.F.R. §§ 825.300 and 825.301.

Source URL: <https://www.ctas.tennessee.edu/eli/designation-notice>