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# Certifications and Reports

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Dear Reader:

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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,

The University of Tennessee  
County Technical Assistance Service  
226 Anne Dallas Dudley Boulevard, Suite 400  
Nashville, Tennessee 37219  
615.532.3555 phone  
615.532.3699 fax  
[www.ctas.tennessee.edu](http://www.ctas.tennessee.edu)

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# Certifications and Reports

Reference Number: CTAS-1034

General Rules.<sup>[1]</sup> Employers may require certification of the need for leave related to a serious health condition of the employee or a family member, and leave for qualifying exigencies and military caregiver leave. In most cases, this certification should be requested at the time the employee gives notice of the need for leave or within five business days thereafter (this is included in the prototype Notice of Eligibility and Rights and Responsibilities, Form WH-381), but the employer may request certification at a later date if the employer later has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification within 15 calendar days after the employer's request, unless it is not practicable despite the employee's diligent, good faith efforts.

The employee must provide a complete and sufficient certification. The certification is incomplete if one or more of the applicable entries have not been completed. It is insufficient if the information provided is vague, ambiguous or non-responsive. If the certification is incomplete or insufficient, the employer must advise the employee in writing of the information necessary to make it complete or sufficient and give the employee seven calendar days (unless impracticable) to cure the deficiency.

At the time the certification is requested the employer must advise the employee of the consequences of failure to return the certification. If an employee fails to provide complete and sufficient certification despite an opportunity to cure, or fails to provide any certification, the employer may deny FMLA coverage until the required certification is provided. If the employee never provides the certification, the leave is not protected under the FMLA.

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[1] 29 C.F.R. § 825.305.

## Medical Certifications

Reference Number: CTAS-1035

When leave is taken for the employee's own serious health condition or that of a family member, the employer may require that the employee provide certification from a health care provider containing the following information<sup>[1]</sup>:

1. Name, address, telephone and fax number of the health care provider and type of medical practice or specialty;
2. Approximate date of onset of the serious health condition and its probable duration;
3. Statement of medical facts to support the need for leave (may include information such as symptoms, diagnosis, hospitalization, prescribed medication, referrals for evaluation or treatment, or other regimen of treatment);
4. If the employee is the patient, information sufficient to establish that the employee cannot perform the essential functions of the employee's job, as well as the nature of any work restrictions, and the likely duration of the incapacity;
5. If the patient is a covered family member with a serious health condition, information sufficient to establish that the family member is in need of care and an estimate of the frequency and duration of the leave required to provide the care;
6. If intermittent or reduced leave is requested for planned medical treatment, information sufficient to establish the medical necessity for the intermittent or reduced leave and an estimate of the dates and duration of treatment and any period of recovery;
7. If intermittent or reduced leave is requested for the employee's serious health condition that may result in unforeseeable episodes of incapacity, information sufficient to establish the medical necessity for the intermittent or reduced leave and an estimate of the frequency and duration of the episodes of incapacity; and
8. If intermittent or reduced leave is requested to care for a covered family member with a serious health condition, a statement that the leave is medically necessary to care for the family member and an estimate of the frequency and duration of the required leave.

"Health care provider" includes any of the following: doctors of medicine or osteopathy authorized to practice medicine or surgery in the state; podiatrists, dentists, clinical psychologists, optometrists, chiropractors, nurse practitioners, nurse-midwives, clinical social workers and physician assistants

properly authorized to practice and perform within the scope of their practice; Christian Science Practitioners listed with the First Church of Christ, Scientist, in Boston (in such case a second or third opinion may be obtained from someone other than a Christian Science Practitioner); any health care provider from whom the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits; and a health care provider practicing in a foreign country in accordance with the laws of that country and within the scope of that practice as defined by that country's law.

The DOL has developed two forms for this purpose: Form WH-380E is for the employee's own serious health condition, and Form WH-380F is for leave to care for a covered family member with a serious health condition. The use of these forms is optional, but highly recommended.

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[1] 29 C.F.R. § 825.306.

## Authentication and Clarification

Reference Number: CTAS-1036

If the employee submits a complete and sufficient certification, the employer may not request additional information from the health care provider. The employer may, however, contact the health care provider for authentication and clarification of the certification after the employer has given the employee an opportunity to cure any deficiencies in the certification. To make this contact, the employer must use a health care provider, human resources professional, leave administrator, or management official. Under no circumstances may the employee's direct supervisor contact the employee's health care provider.

Authentication means verification that the certification form was completed or authorized by the health care provider. Clarification means contacting the health care provider to understand the handwriting or the meaning of a response. Employers may not ask health care providers for more information that is contained on the form.<sup>[1]</sup>

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[1] 29 C.F.R. § 825.307.

## Second and Third Opinions

Reference Number: CTAS-1037

If the employer has reason to doubt the validity of a medical certification, the employer may require the employee to obtain a second opinion, at the employer's expense, from a health care provider designated by the employer, as long as the health care provider is not employed on a regular basis by the employer and does not regularly contract with the employer. If the first and second opinions differ, the employer may require the employee to obtain a third certification, again at the employer's expense, from a health care provider chosen or approved by the employer and the employee. The third opinion will be binding. The employer is required to provide the employee with copies of the second and third opinions upon request, within five business days after the request is made.<sup>[1]</sup>

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[1] 29 C.F.R. § 825.307

## Recertification

Reference Number: CTAS-1038

The general rule is that an employer may ask for recertification no more often than every 30 days while the employee is on leave. If the medical certification indicates that the duration is expected to be more than 30 days, recertification cannot be requested until expiration of that duration or six months, whichever is sooner. An employer may request recertification in less than 30 days if the employee requests an extension of leave, if circumstances change significantly from the prior medical certification, or if the employer receives information that casts doubt on the employee's stated reason for leave or the continuing validity of the certification. The employer may ask for the same information on recertification as permitted for the original certification. The employer must allow the employee at least 15 calendar days to provide the recertification. Recertifications are at the employee's expense.<sup>[1]</sup>

[1] 29 C.F.R. § 825.308.

## Annual Medical Certification

Reference Number: CTAS-1039

When an employee's leave for a serious health condition extends beyond a single leave year, the employer may require a new medical certification in each subsequent leave year, subject to the same provisions for authentication, clarification, and second and third opinions as the original certification.<sup>[1]</sup>

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[1] 29 C.F.R. § 825.305(e).

## Military-related Certifications

Reference Number: CTAS-1040

Employers are entitled to obtain certification of the need for leave for qualifying exigencies and for military caregiver leave. The DOL has developed forms for these purposes: Form WH-384 for qualifying exigency, and Form WH-385 for military caregiver leave. These forms are optional, but highly recommended.

Certification of Leave for Qualifying Exigency.<sup>[1]</sup> The first time an employee requests leave for a qualifying exigency arising out of the active duty or call to active duty of a covered military member, the employer may require a copy of the military member's active duty orders or other military documentation showing the call to active duty or active duty status, and the dates of the active service. This need only be provided once.

When the employee asks for leave for a qualifying exigency, the employer may require a certification signed by the employee containing the information contained in DOL's Form WH-384. The use of this form is not required, but it is highly recommended. No information other than that set out in the DOL's form may be requested from the employee.

The employer may contact the appropriate unit of the Department of Defense to verify that a covered military member is on covered active duty or call to active duty status, but no further information may be requested. If the qualifying exigency involves meeting with a third party, the employer may contact the individual or entity to verify the meeting schedule and the nature of the meeting. The employee's permission is not necessary to make either of these contacts.

Certification for Military Caregiver Leave.<sup>[2]</sup> When leave is taken to care for a covered servicemember with a serious injury or illness, the employer may require the employee to provide certification by an authorized health care provider of the covered servicemember, which includes any of the following:

1. A U.S. Department of Defense ("DOD") health care provider,
2. A U.S. Department of Veterans Affairs ("VA") health care provider.
3. A DOD TRICARE network authorized private health care provider, or
4. A DOD non-network TRICARE authorized private health care provider.

The employer may request certification from the health care provider, and from the employee or covered servicemember, relative to the injury or illness and the need for leave. The information the employer is authorized to request is contained on the optional DOL Form WH-385. It is highly recommended that the employer use the DOL form in order to ensure that the appropriate information is obtained and no unauthorized information is requested. In lieu of this form, however, employers are required to accept "invitational travel orders" (ITOs) or "invitational travel authorizations" (ITAs) issued to any family member to join an injured or ill servicemember at his or her bedside. An ITO or ITA is sufficient certification for the duration of time specified in the ITO or ITA, and authorizes leave either in a single block of time or on an intermittent basis; no further certification is necessary.

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[1] 29 C.F.R. § 825.309.

[2] 29 C.F.R. § 825.310.

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