

Process of Approving or Denying a Request for FMLA

Under the Family Medical Leave Act (FMLA), locations must provide eligible employees with specific notices of their FMLA rights and responsibilities and designate the leave as FMLA when appropriate.

Posting:

Under the FMLA, covered employers are required to post a general notice of the FMLA provisions for employees and applicants. In addition, if there are eligible employees, covered employers are required to distribute the general notice to employees. This notification is included in Diocese Employee FMLA packets. The poster should also be posted at every location; posters can be accessed at the following link: <https://owensborodiocese.org/wp-content/uploads/FMLA-2023.pdf>

Request by the employee:

A location may learn of a request for FMLA leave when the employee submits a request for time off or when the employer acquires knowledge that an employee needs leave that may be for an FMLA-qualifying reason. According to FMLA regulations, *"An employee giving notice of the need for FMLA leave does not need to expressly assert rights under the Act or even mention the FMLA to meet his or her obligation to provide notice."* Locations are required to respond to the employee within five business days of receiving a request or of becoming aware of the need for FMLA leave. The easiest way to comply with this response requirement is to use the FMLA DOL Form "Notice of Eligibility and Rights & Responsibilities (WH-381). "

Eligibility for FMLA:

An employee is eligible for FMLA leave only if the employee meets both of the following eligibility requirements: **(1) Has been employed by the employer for at least 12 months, and (2) has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave.** The 12 months of employment do not have to be consecutive. That means any time previously worked for the same employer (including seasonal work) could, in most cases, be used to meet the 12-month requirement. If the employee has a break in service that lasted seven years or more, the time worked prior to the break will not count *unless* the break is due to service covered by the Uniformed Services Employment and Reemployment Rights Act (USERRA), or there is a written agreement, including a collective bargaining agreement, outlining the employer's intention to rehire the employee after the break in service. *See Reservists*". If the employee does not meet these criteria, the employer's responsibility is to notify the employee of ineligibility for FMLA leave by specifying at least one criterion the employee does not meet on the Form WH-381.

Employers typically respond to FMLA leave requests by providing the employee with the Notice of Eligibility and Rights & Responsibilities (Form WH-381) and a medical certification form. There is no requirement for an employer to request medical certification if an employer has enough information to know that an employee's absence is FMLA qualifying. If employers have enough information on the initial request to approve or deny the FMLA leave, they may supply the Designation Notice (Form WH-382) at the same time as the Notice of Eligibility and Rights & Responsibilities (Form WH-381). Employers should be consistent, though, in the policy and practice of requiring medical certifications from employees requesting FMLA leave. Employers are not permitted to request a medical certification for leave to bond with a healthy newborn child or a child placed for adoption or foster care.

When it is medically necessary, employees may take FMLA leave intermittently – taking leave in separate blocks of time for a single qualifying reason – or on a reduced leave schedule – reducing the employee's usual weekly or daily work schedule. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the employer's operation.

The Department of Labor (DOL) has published different model certification forms. The forms are to help employers in the administration of FMLA leave. When requiring a medical certification, employers should select the appropriate form to include with the Notice of Eligibility and Rights & Responsibilities (Form WH-381). Employees must be allowed up to 15 calendar days to complete and return their certification form. Employers usually hand deliver FMLA forms to employees. If that is not possible, FMLA forms may be mailed to the employee's address of record.

Incomplete Information:

On occasion, certification forms are returned to the employer incomplete or with insufficient information. 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 nonresponsive. The employer must provide the employee seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent good-faith efforts) to correct any such deficiency, and the employer must inform the employee of the consequences for failure to provide a complete and sufficient certification. If the employee fails to provide the certification, the employer (i.e., a health care provider, human resource professional, leave administrator or management official) may contact the employee's health care provider directly for purposes of clarification and authentication.

According to the U.S. Department of Labor's *FMLA Guide for Employers*, "Authentication means providing the health care provider with a copy of the certification and confirming that the information contained on the certification form was completed and/or authorized by the health care provider who

signed the document. Clarification means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. An employer may not ask health care providers for additional information beyond that in the certification form."

Designating the leave as FMLA:

The DOL provides a model Designation Notice (Form WH-382) that can be used to notify the employee whether his or her FMLA request has been approved or denied. If employers have enough information on the initial request to approve or deny the FMLA leave, they may supply the Designation Notice (Form WH-382) at the same time as the Notice of Eligibility and Rights & Responsibilities (Form WH-381). If employers are requesting a medical certification form, they must allow 15 calendar days for the return of this document prior to designating the time off as FMLA leave. Even though employers may not formally designate the leave as approved under the FMLA until several weeks after it starts, in some circumstances, they still track FMLA leave from the start of the leave. After an employee returns the medical certification form, an employer has five business days to approve or deny FMLA leave. If the employee has not returned medical certification within 15 calendar days as stated on the Notice of Eligibility and Rights & Responsibilities (WH-381), and the employer is not aware of extenuating circumstances, the employer should notify the employee in writing that the FMLA request has been denied, using the Designation Notice (Form WH-382) or a similar communication.

Examples:

Scenario 1:

Susan, who meets all FMLA eligibility criteria, turns in a doctor's note stating that she will be under her doctor's care all of next week for surgery and follow-up treatment.

The employer should send Susan the Notice of Eligibility and Rights & Responsibilities (Form WH-381) and the Designation Notice (Form WH-382) approving leave within five business days. There is no need to ask for a medical certification because the doctor's note provided sufficient information, unless it is the employer's practice to request a specific medical certification form.

Scenario 2:

Jessica has worked for the employer for six months. She notifies her manager that she is pregnant and due in two months. In addition to the FMLA leave policy, the organization has a policy that provides up to six weeks of personal leave for employees who have worked at least 90 days.

The employer should provide Jessica with the Notice of Eligibility and Rights & Responsibilities (Form WH-381). Here is how to complete Section 1 based on this scenario:

[X] Are **not** eligible for FMLA leave, because (only one reason need be checked, although you may not be eligible for other reasons):

[X] You have not met the FMLA's 12-month length of service requirement. As of the first date of requested leave, you will have worked approximately 8 months toward this requirement.

The employer should also include a letter stating that although Jessica is not eligible to use FMLA leave, she may be eligible for a personal leave of absence. The letter should describe any application or approval process for the personal leave of absence. Also review the Diocese's FMLA and maternity/paternity policy.

FMLA Forms

- Diocese request for FMLA and policy
- DOL Form WH-381 Notice of Eligibility and Rights and Responsibilities
- DoI Form WH-380– Medical Certification Form
- DOL Form WH-382 – Designation Notice
- Diocese of Owensboro FMLA Time Tracking Tool

Summary of Steps

- **Step One** – Employee Notice Requirement – Location gives employee the “Diocese of Owensboro Request for FMLA Form,” a copy of the policy and the FMLA poster.
- **Step Two (A)** – Once the location receives the completed request form, the location gives the Eligibility Notice to Employee – Form WH-381. Complete Form WH-381 within 5 days of receiving the request form.
- **Step Two (B)** – If applicable, the location then gives the Certification Form WH-382 to employee. Form WH-382 must be completed by the Employees’ MD. The employee has 15 days to complete Form WH-382 but they can be given an extension up to 7 days. **(Give the employee Form WH-381 and Form WH-382 at the same time.)** *There is no requirement for an employer to request medical certification if an employer has enough information to know that an employee's absence is FMLA qualifying. Many times a note from the doctor of the leave duration will work.*
- **Step Three** – Location gives the Designation Notice Form WH- 382 to the employee. Must complete Form WH- 382 within 5 days of receiving Form WH-380 from the employee. Location must track FMLA days.
- **Step Four** – Employee gives a “Return to Work Form” signed by MD to the location. Must be cleared to work.