

FMLA certification

This column has had several articles regarding Family Medical Leave Act (FMLA) certification. Below are excerpts from 29 CFR Part 825, which contains the implementing regulations of 29 USC 2601 *et seq.*

§825.305 When must an employee provide medical certification to support FMLA leave?

(a) An employer may require that an employee's leave to care for the employee's seriously-ill spouse, son, daughter, or parent, or due to the employee's own serious health condition that makes the employee unable to perform one or more of the essential functions of the employee's position, be supported by a certification issued by the health care provider [HCP] of the employee or the employee's ill family member. An employer must give notice of a requirement for medical certification each time a certification is required; such notice must be written notice whenever required by §825.301. An employer's oral request to an employee to furnish any subsequent medical certification is sufficient.

§825.306 How much information may be required in medical certifications of a serious health condition?

(a) DOL has developed an optional form (Form WH-380, as revised) for employees' (or their family members') use in obtaining medical certification, including second and third opinions, from [HCPs] that meets FMLA's certification requirements.... This optional form reflects certification requirements so as to permit the [HCP] to furnish appropriate medical information within his or her knowledge.

(b) Form WH-380, as revised, or another form containing the same basic information, may be used by the employer; however, no additional information may be required. In all instances the information on the form must relate only to the serious health condition for which the current need for leave exists.

§825.306(b) is very important because the WH-380 is optional. The USPS may not require an employee to use the WH-380 in lieu of NALC's forms because NALC's forms contain the same basic information. §825.306(b) makes another important point—the USPS may not require additional information from the employee. However, that limit must be read in conjunction with §825.307—that is, so long as the employee submits a complete certification signed by their HCP. A complete FMLA certification means

that the HCP has provided information within his or her medical knowledge on the optional Form WH-380, NALC's forms, or another form containing the same basic information. The required entries can be found at §825.306(b) *et seq.*

§825.307 What may an employer do if it questions the adequacy of a medical certification?

(a) If an employee submits a complete certification signed by the [HCP], the employer may not request additional information from the employee's [HCP]. However, a [HCP] representing the employer may contact the employee's [HCP], **with the employee's permission**, for purposes of clarification and authenticity of the medical certification. (Emphasis added.)

§825.307(a) restates that if an employee submits a complete certification signed by their HCP, the USPS may not request additional information from the employee's HCP. It also states that you have the *option* to allow the USPS's HCP to contact your HCP and only for purposes of clarification and authentication of the medical certification at issue. It is strongly suggested that you not sign any form from the USPS that requests more information than is required by §825.306(b) *et seq.* It is also strongly suggested that you not sign an authorization form that releases your medical history/information and/or gives the USPS open-ended permission to have multiple contacts with your HCP. The USPS may not demand that you sign an authorization so that their HCP may contact your HCP. If you are suspicious of the USPS form, give it to your local union representative for review.

§825.307(a)(2) states that an employer who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the employer's expense. Pending receipt of the second (or third) medical opinion, the employee is provisionally entitled to the benefits of the Act, including maintenance of group health benefits. If the certifications do not ultimately establish the employee's entitlement to FMLA leave, the leave shall not be designated as FMLA leave and may be treated as paid or unpaid leave under the employer's established leave policies. The employer is permitted to designate the HCP to furnish the second opinion, but the selected HCP may not be employed on a regular basis by the employer. ☒