

Mitchell & Sheahan, P.C.

Attorneys At Law

EMPLOYEE MEDICAL INFORMATION & FMLA

The confidentiality of a person's medical information is protected by statutes and judge-made law as well. Yet, limited disclosure of medical information is necessary for many purposes. In the workplace, for example, when a medical condition warrants Family & Medical Leave Act ("FMLA") absence, the employer can require certification of the relevant medical facts. Both federal and Connecticut FMLA, however, require that medical inquiries be limited and the information supplied be protected from unnecessary disclosure.

Employers should use the medical certification forms (WH380E for employees' own medical conditions and WH380F for employee's family members' medical conditions) recommended by the United States Department of Labor to gather the required information from the health care provider ("HCP"). The employee should be given these forms and a deadline (at least 15 days) for having them completed and returned by the HCP. The forms permit but do not require that the HCP disclose a diagnosis. Their focus is on the timing of treatment and the effect of the condition on the patient's ability to perform job functions or otherwise conduct normal daily activities. For leaves due to the employee's own medical condition, the employer should provide a job description with the form.

The completed form or other medical backup information submitted by the employee to support the need for the leave must be used only for the purpose of determining the employee's eligibility for the leave. The disclosure of the material provided by the HCP should be limited to those persons in the employer's organization with the responsibility for making that decision. If the supervisor is not involved in making that judgment, he or she should not be given access to the information. It is sufficient for the supervisor's purposes to know that the employee will be absent for the prescribed period for an approved reason.

If the medical certification is so incomplete or unclear that a judgment on eligibility can't be made, the employer must give the employee an opportunity to get the HCP to clarify and failing that curing the problem, may contact the HCP directly for the necessary information. The person making the contact for the employer may be a company HCP, a Human Resources representative, a leave administrator or another manager, **BUT NOT THE EMPLOYEE'S IMMEDIATE SUPERVISOR**. The inquiry can only seek the clarification of illegible handwriting, unclear use of a word or term or missing information from the form, not more general information.

Like all medical information an employer has occasion to receive about employees, medical certifications must be kept separately from other personnel file material and in files with restricted access. Beyond staff responsible for leave administration, the contents of such files should not be shared except that supervisors may be apprised of any work restrictions required, staff responsible for safety and first aid may be apprised of any circumstances that might require their action and government investigators looking into the employer's FMLA compliance may be granted access to the materials.