

## Addendum to FMLA Certification of Health Care Provider

Dear Provider:

According to the last medical certification related to [Employee]'s need for leave, [Employee] was estimated to need time off due to episodic flare-ups of her condition 1 time per month, for 1-2 days per episode.

The attached calendar indicates [Employee]'s actual pattern of leave usage since the last certification was submitted. As you may observe from the calendar, over 80 percent of [Employee]'s absences under this certification have been adjacent to weekends or other scheduled days off.

In accordance with 29 C.F.R. §825.308(e), please indicate whether [Employee]'s serious health condition and need for leave are consistent with this pattern of absences:

- Yes, the pattern of usage reflected on the enclosed calendar is consistent with the employee's serious health condition and need for leave.
  
- No, the pattern of usage reflected on the enclosed calendar is not consistent with the employee's serious health condition.

\_\_\_\_\_  
Signature of Health Care Professional

\_\_\_\_\_  
Printed Name of Health Care Professional

\_\_\_\_\_  
Date

**Thank You**

### **GINA Notification:**

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. **To comply with this law, we are asking that you not provide any genetic information when responding to this request for medical information.** "Genetic information," as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

## Overview of WA Paid Sick Leave Statute

*Below are the basic elements of the new Washington Paid Sick Leave law. The statute directs the Department of Labor & Industries to adopt rules to carry out and enforce the law, so we are likely to see regulations issued during 2017 that will elaborate on the statutory requirements.*

- Effective Date: January 1, 2018
- Employer Coverage: Statute appears to apply to all employers, public and private, and regardless of size.
- Employee Coverage: Two things to note here:
  - First, the paid sick leave requirements will be found in RCW 49.46.020, which is the Minimum Wage Act. RCW 49.46.010 provides the definitions for that chapter, and the term “employee” is defined to exclude exempt employees (who are employed in bona fide executive, administrative or professional capacities). L&I regulations may provide a more expansive definition of employee, but it’s possible the new sick leave requirements will only apply to non-exempt employees.
  - Second, it seems likely that the statute will apply to all non-exempt employees, including temporary and part-time employees. That is true under the Seattle paid sick/safe leave ordinance, and there’s nothing in the initiative that would preclude coverage of part-time or temporary employees. An employer may impose a 90-day waiting period for use of accrued leave, so short-term temps may technically accrue leave but might not be around long enough to use it. Given that many employer policies do not offer sick leave to temporary employees or part-time employees working under a particular hour threshold, this may require policy changes and/or bargaining.
- Accrual: Employees accrue 1 hour of paid leave per 40 hours worked. That translates to 52 hours (or 6.5 days) for an employee working 2080 hours per year. Note that there is no cap on accrual, which means that an employee working significant overtime hours will accrue additional paid sick leave. An employer may “front load” the sick leave rather than accruing based on hours worked as long as the practice meets or exceeds the statute’s requirements.
- Carryover: Employees are entitled to carry over up to 40 hours to the following year. “Year” is not yet defined, so presumably employers can use a calendar year or some other year, such as one tied to an employee’s anniversary date.
- Treatment upon Separation: An employer is not obligated to cash out unused accrued leave upon separation. However, if an employee is rehired within 12 months, any unused leave balance should be reinstated and the prior employment should be counted to determine eligibility to use (e.g., no new 90-day waiting period).
- Use of Accrued Leave: Employees may use leave for the following reasons:
  - Employee’s own illness, injury or health condition; to accommodate the need for medical diagnosis, care or treatment of a health condition; or preventive medical care.
  - Employee’s care for a family member with illness, injury or health condition; care for family member who needs medical diagnosis, care or treatment; care for family member who needs preventive medical care. Family members include employee’s:

- Child (whether biological, adoptive, foster, step-child, or child for whom employee stands in loco parentis, is a legal guardian for, or is a de facto parent – “regardless of age or dependency status.”
  - Parent, whether biological, adoptive, de facto, step-parent, legal guardian or person who stood in loco parentis to employee when employee was a child.
  - Spouse or registered domestic partner.
  - Grandparent.
  - Grandchild.
  - Sibling.
- Employee’s place of business has been closed by order of public official for any health-related reason, or where employee’s child’s school or day care is closed for such a reason.
- Absences covered by the Domestic Violence/Sexual Assault/Stalking leave statute.
- Notice: Employer may require “reasonable notice” of absence, as long as notice does not interfere with use of leave.
- Documentation: Employer may only require documentation for absences exceeding 3 days. Thus, there’s no ability to require a note where the use of sick leave is suspicious.
- No Adverse Consequences: Employers cannot discriminate or retaliate against employees for their use of paid sick leave. Employers may not have a policy that counts the use of paid sick leave as an absence that may lead to discipline. Thus, no-fault attendance policies must exclude absences covered by paid sick leave. Since the statute specifically focuses on policies that could impose “discipline,” employers may presumably maintain policies that reward good attendance, even if an employee becomes ineligible for a reward due to use of paid sick leave.
- Tracking: Employers are required to provide “regular notification” to employees about the amount of paid sick leave available to them.

[LETTERHEAD]

[date]

[Doctor name]  
[Doctor address]

Re: [Employee Name]

Dear Dr. \_\_\_\_\_:

On behalf of \_\_\_\_\_ Transit, I am writing regarding our employee and your patient, \_\_\_\_\_. Based on prior leave documentation and discussions with Ms. \_\_\_\_\_, we are aware that she has been diagnosed with a back condition that causes her to miss work for days or weeks at a time, with little advance notice. Ms. \_\_\_\_\_'s need for leave has increased of late, and she will shortly exhaust her annual 12-week FMLA entitlement. Ms. \_\_\_\_\_ has indicated that she will continue to need additional time off from work after exhausting her FMLA leave, so we are approaching this as a request for reasonable accommodation. To that end, we are seeking your input has via the enclosed Questionnaire as to the extent to which Ms. \_\_\_\_\_ will continue to need leave, and whether there are any reasonable accommodations we could provide that would allow Ms. \_\_\_\_\_ to maintain reliable attendance.

By way of background, \_\_\_\_\_ Transit provides public transportation throughout \_\_\_\_\_ County, as well as commuter services into adjoining counties. We provide both "fixed-route" scheduled service as well as door-to-door paratransit services to disabled and other passengers. Ms. \_\_\_\_\_ is employed as a dispatcher for \_\_\_\_\_ Transit, and her responsibilities include ensuring that our transit vehicles are where they need to be, which encompasses communicating with co-workers to address mechanical, weather or traffic issues; scheduling and dispatching paratransit services as needed, and the like. As the community depends on reliable public transportation, it is essential that \_\_\_\_\_ Transit ensure that our dispatchers and drivers are at work and able to perform their job duties on a reliable basis. Given the nature of our services, if an employee is absent, we cannot simply leave that role "dark"; rather, we must arrange for alternative coverage by another employee to avoid disruption of transit services. This can be particularly challenging in the case of unpredictable employee absences. Here, the unpredictable frequency and duration of Ms. \_\_\_\_\_'s leave has been very challenging, as it forces us to scramble to ensure coverage of Ms. \_\_\_\_\_'s duties. We are also concerned that Ms. \_\_\_\_\_'s need for leave has increased over the last six months.

As noted above, Ms. \_\_\_\_\_ will soon exhaust her 12 weeks of FMLA leave. \_\_\_\_\_ Transit is willing to consider approving additional leave as a reasonable accommodation of a disability, provided that we can do so without causing an undue hardship. Accordingly, we welcome your input as to the extent of Ms. \_\_\_\_\_'s ongoing need for leave, whether you anticipate any changes in her leave needs, and whether there are any other accommodations we can provide that would allow Ms. \_\_\_\_\_ to maintain regular and reliable attendance. If we are unable to accommodate Ms. \_\_\_\_\_ in her existing job, we can also work with her to evaluate her qualifications for and interest in other vacant positions we may have.

[Doctor name]  
[date]  
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Dr. \_\_\_\_\_, your responses on the enclosed Questionnaire will be of great assistance as we evaluate options for Ms. \_\_\_\_\_. We have enclosed a release signed by Ms. \_\_\_\_\_ that authorizes you to share this information with \_\_\_\_\_ Transit Human Resources. I have also enclosed a job description for Ms. \_\_\_\_\_'s current position for your reference. You can forward responsive information to me via our confidential fax number (\_\_\_\_\_), via email (\_\_\_\_\_) or via regular email in the enclosed, preaddressed envelope. Should you have questions, you may reach me by phone at \_\_\_\_\_. Again, thank you very much for your time and attention to this matter.

Very truly yours,

[insert signature block]

Enclosure:     Authorization for Release of Protected Health Information  
                  Job Description



3. Based on the information provided about the nature of Ms. \_\_\_\_\_'s job, can you suggest any accommodations that would permit her to perform the essential job functions of her position on a regular and reliable basis?

Yes                      No

If yes, please describe the suggested accommodations (*e.g.*, medical leave to obtain treatment, modification of job duties, temporary or permanent reassignment to a different position, other). To the extent you identify a suggested accommodation, please advise how long Ms. \_\_\_\_\_ would need that accommodation(s).

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Signature of Health Care Professional

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Printed Name of Health Care Professional

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Date

Thank You

**AUTHORIZATION TO DISCLOSE MEDICAL INFORMATION**

I, \_\_\_\_\_ *(employee's name)*, hereby authorize \_\_\_\_\_ *(health provider name(s))*  
\_\_\_\_\_, at *(clinic/hospital)*, to release the following medical  
information about me: *(information related to my fitness for duty, accommodations that may be needed  
for me to perform essential functions and/or prognosis for return to employment).* **\*\*If authorization is  
for psychotherapy notes no other health information must be listed\*\***

This information may be sent to the following person or his/her designated representative:

\_\_\_\_\_  
*(insert employer representative)*  
\_\_\_\_\_  
\_\_\_\_\_

Information requested may include, but is not limited to: computer generated or hand-written notes; reports of laboratory analyses and procedures; medications prescribed, recommended or provided; reports of telephone conversations; written correspondence; and second opinions.

I understand that I may revoke this authorization in writing at any time by sending a written request to \_\_\_\_\_ *(employer's HR representative)*. I further understand that revocation of this authorization will not affect any action my employer may take in reliance on this authorization before receipt of my written notice of revocation.

The information used or disclosed as permitted by this authorization may be re-disclosed by the recipient and no longer protected by federal law. I understand that I may refuse to sign this authorization. However, a refusal to sign this authorization may have employment consequences.

A copy of this release shall be as effective as the original. This authorization shall be effective for a period of ninety (90) days from the date this authorization is signed.

\_\_\_\_\_  
Employee/Patient Signature

\_\_\_\_\_  
Date

**A copy of this signed authorization will be provided to the Employee/Patient.**

*If this authorization is signed by a personal representative on the Employee/Patient's behalf, please complete the following:*

Personal Representative's Name: \_\_\_\_\_

Relationship to Patient: \_\_\_\_\_