

# HR QUESTION ? of the month



## *Is fitness for duty certification legal after FMLA maternity leave?*

**Question:** One of our employees went on maternity leave and wants to return to work a few weeks earlier than planned. Is it required or legal to ask her to bring Fitness for Duty Certification?

**Answer:** If the employee's leave was taken as baby bonding leave under the protection of the federal Family and Medical Leave Act (FMLA), then such leave was not taken in connection with a serious health condition, and as such the employer would not need or necessarily be entitled to a release to return to work, which is by definition inconsistent with a leave that was not taken due to the employee's inability to work. If, however, all or any part of the employee's absence was in connection with a pregnancy-related medical condition that rendered her ineligible to work, and the employer has a policy or practice of requiring employees who are absent in connection with medical conditions to produce a fitness for duty certificate upon their return, the employer is within its rights to treat the employee no differently. If the employee was not absent in connection with a medical condition, but the employer has a policy that requires all employees who take time off from work in connection with the birth of a child, whether FMLA protected or not and regardless of gender, to produce a fitness for duty certificate before returning to work, we are not aware of any law which would prohibit this (although as noted, it would seem irrelevant and incongruent to require employees who take time off from work for a non-medical reason to produce a medical fitness for duty statement). Keep in mind that employers ARE prohibited by federal and state law from discriminating against employees on the basis of gender, including pregnancy. This means that the employer should ensure that any policy requiring a fitness for duty certificate from employees who take leave to have a baby should be similarly imposed upon employees who take leave in connection with other temporary medical conditions.

Generally, the best practice and our recommendation is to allow an employee who has taken FMLA leave to bond with a newborn child to return to work at or before the conclusion of the 12-week period of leave under the Act. Unless the leave was also taken in connection with a serious health condition, we would not recommend requiring a fitness for duty certificate unless requiring one is consistent with an employer policy in connection with ALL employees who take time off to give birth or otherwise for any temporary medical reason.

Want to learn more about how to handle issues like this? [Click Here](#) to listen to our podcast about Fitness for Duty Certification.

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