



FMLA Second and Third Opinion Checklist (HC1004)

When “curing” is in effective if resolving any questions or concerns about the FMLA Medical Certificate, or the employee has reason to doubt the validity of the existing medical certificate the employer can request the employee participate in a second opinion from an independent, unbiased healthcare provider.

According to the US Department of Labor, Office of the Assistant Secretary for Policy¹

*“If the first and second opinions provided differ, the employer may require the employee to obtain certification from a third health care provider, **at the employer's expense**. This third opinion will be **final and binding**.*

*The third health care provider must be **designated or approved jointly** by the employer and the employee. The employer and the employee must each act in good faith to attempt to reach agreement on whom to select for the third opinion provider.*

- *If the employer does not attempt in good faith to reach agreement, the employer will be bound by the first certification.*
- *If the employee does not attempt in good faith to reach agreement, the employee will be bound by the second certification.*

We recommend attempting to have the employee “cure” the medical certificate themselves prior to requesting a second opinion. Confirm the following has occurred prior to moving forward with a second or third opinion:

- FD2105 or FD2106 (or FD2108) / Start with the curing letters, verify you have sent the FMLA Medical Certificate Curing Requests

Once you have completed the Curing (or clarification) stage, if the employee has failed to “cure” the medical certificate:

- Fully document the reason and/or justification as to why you are requesting a second opinion:
- FMLA - ADA Curing Second - Third Medical Opinion Justification Form (FD2001) completed to validate the need for second or third opinion

There are two general areas employer’s typically experience that lead them to request a second opinion:

- 1. There is a question about the authenticity of the health care provider’s signature (i.e. fraud is suspected)**
 Prepare FMLA Second Opinion Clarification Regarding Medical Certificate (FD2109)

¹ <http://webapps.dol.gov/elaws/whd/fmla/12a4.aspx>



2. The employee is exceeding the usage prescribed and you are requesting a second opinion

Ex.] The medical certificate indicates the employee should be out on intermittent leave 2-3 days a month however, when you check their usage the employee is taking 5-6 days per month on a consistent basis. Or, they seem to always need leave on a Monday or Friday afternoon.

- Prepare FMLA Exceeding Medical Certificate - Notice for Second Opinion (FD2110)

Third Opinions - FMLA Medical Certificate:

1. Conflicting 1st & 2nd Opinions

- FMLA Third Opinion Clarification Regarding Medical Certificate - Conflicting 1st and 2nd Opinion (FD2111)

Or

2. Employee has requested it

- Prepare FMLA Employee Request for Third Opinion (FD2112)

Things to Remember:

1. Pending receipt of the second/third opinion the employee is conditionally covered under FMLA
2. If the employee or the employee's family member does not authorize release of related medical information regarding the need for FMLA when requested by the health care provider conducting the second/third opinion, you may **deny** the FMLA leave.
3. The employer may designate which health care provider provides the second opinion, however the health care provider should not be in the regular employment of the employer, or a provide the employer "regularly contracts" with. There is an exception to this rule if the employer is located in a region that has limited access to health care, however we recommend you consider paying for the travel to a different area if there is a possibility of perceived bias by the employee.
4. The employer and employee must agree on the health care provider for the third opinion.
5. Second and third opinions are at the employer's expense as well as all reasonable "out of pocket" travel expenses.
6. If the second and third opinion conflict, they employer may request a third opinion but it is not required. However, the employee may request a third opinion. If the employee does not request a third opinion and the employer does not want a third opinion, the second opinion can be implemented.
7. Third opinions are final and binding.
8. If the employee request a copy of the third and second medical opinions, The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request from the employee **five business days** of the request.