**CFRA – FEHA/ADA Curing Second - Third Medical Opinion Justification Form (CAA2001)**

**Date:** DATE

**Prepared By:** NAME AND TITLE **Reviewed By:** NAME AND TITLE

**Employee:** FIRST AND LAST NAME **Job Title:** JOB TITLE

**Department/Supervisor**

**Job Title:**

**Work Location:**

**PURPOSE OF THE FORM:**

Use this form to document the employer’s efforts in establishing justification to confirm the need for curing, and obtain a second or third medical opinion as it relates to medical leaves and accommodations including the California Family Rights Act (CFRA) and FEHA (CA ADA) / Americans with Disabilities Act (ADA). NOTE: Second and Third Opinions are not available in CA for the employee’s family member, can be use for the employee’s Serious Health Condition only.

**BACKGROUND DATA:**

**Medical Certificate:** Per [EMPLOYEE NAME]’s [NAME OF FORM] dated [INDICATE DATE OF MEDICAL CERTIFICATE AND HEALTH CARE PROVIDER’S NAME]

* LIST AREAS NEEDING TO BE CURED AND/OR RESTRICTIONS/TIME OFF such as intermittent leave 2-3 days per month

|  |  |  |
| --- | --- | --- |
| **Clarification Questions** | **Yes** | **No** |
| 1. Does the initial medical certificate establish the employee’s entitlement to CFRA/ADA/FEHA leave? |  |  |
| 1. Is there a question regarding the validity of the document? |  |  |
| 1. Is there a question regarding the health care provider’s specialization and/or education as it relates to the medical condition? |  |  |
| 1. Is the health care provider providing the certification an expert in the relevant field? |  |  |
| 1. Is the leave the employee is asking for disproportionate to the condition? |  |  |
| 1. Is there a question regarding the validity of the employees use of leave? |  |  |
| 1. Is the employee’s leave usage consistent with their medical certificate? |  |  |
| 1. OTHER, Be Specific |  |  |

**If you answered no to question 7, analyze the actual leave usage in comparison to the medical certificate.**

**USAGE ANALYSIS & APPLICATION OF RESTRICTION OR ABILITIES RESEARCHED:**

**ACTUAL USAGE…**

|  |  |  |
| --- | --- | --- |
| **Date range of usage** | **Total # of days/hrs used** | **Analysis of existing medical certification** |
| EXAMPLE: 1.01.12- 5.1.12 | 7 day  (56 hours) | 2 days (16 hours) over prescribed leave total of 1 day (8 hours) per month |
|  |  |  |
|  |  |  |
|  |  |  |

**Second and/or Third Opinion Analysis Resources:**

According to the CFRA, “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.” (825.307 b, 1)

**Independent Medical Examiner (IME):** To locate an IME in your area you should be able to search the Internet for an IME directory in your area. It is important to remember that you as the employer cannot have any discussions with the doctor regarding the process or determination of their opinion.

***Clarification and authentication per* Sections: § 825.307   a – e of the federal**  **CFRA**

* “Authentication” means providing the health care provider with a copy of the certification and requesting verification that the information contained on the certification form was completed and/or authorized by the health care provider who signed the document; no additional medical information may be requested.
* “Clarification” (Curing) means contacting the health care provider to understand the handwriting on the medical certification or to understand the meaning of a response. Employers may not ask health care providers for additional information beyond that required by the certification form.

**If an employee chooses not to provide the employer with authorization allowing the employer to clarify the certification with the health care provider, and does not otherwise clarify the certification the employer may deny the taking of**  **CFRA leave if the certification is unclear. [However, you can also implement a request for a second and third opinion.]**

***Second opinion***

1. 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. If the certifications do not ultimately establish the employee's entitlement to CFRA leave, the leave shall not be designated as CFRA leave and may be treated as paid or unpaid leave under the employer's established leave policies.
2. The employer is permitted to designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the employer. The employer may not regularly contract with, or otherwise regularly utilize the services of the health care provider furnishing the second opinion unless the employer is located in an area where access to health care is extremely limited (*e.g.* a rural area where no more than one or two doctors’ practices in the relevant specialty in the vicinity).

***Third opinion***

1. If the opinions of the employee's and the employer's designated health care providers differ, the employer may require the employee to obtain certification from a third health care provider, again at the employer's expense.
2. This third opinion shall be final and binding.
3. 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 who to select for the third opinion provider.

***Copies of opinions***

The employer is required to provide the employee with a copy of the second and third medical opinions, where applicable, upon request by the employee. Requested copies are to be provided within five business days unless extenuating circumstances prevent such action.

***Travel expenses***

If the employer requires the employee to obtain either a second or third opinion, the employer must reimburse an employee or family member for any reasonable “out of pocket” travel expenses incurred to obtain the second and third medical opinions. The employer may not require the employee or family member to travel outside normal commuting distance for purposes of obtaining the second or third medical opinions except in very unusual circumstances.