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## Employee Benefits – Question of the Month

May 2018

**Q:** When an employee has a serious health condition for which leave is requested, such as a pregnancy, I understand that the employer is supposed to give the employee the Notice of Eligibility and Rights & Responsibilities (Eligibility Notice) within five days after learning of the need for leave. I also understand that the employer can ask the employee to get a doctor's certification that he/she has a serious health condition and must give 15 days for that to happen, after which the employer has five days to issue a Designation Notice informing the employee of whether the leave is granted or denied.

My question is, when does the employer need to give the Eligibility Notice (starting the certification process) to a pregnant employee: As soon as it learns about the pregnancy, after the baby is born, or sometime in between?

**A:** Practices can vary from employer to employer. Technically, you should issue the Eligibility Notice and request medical certification within five days after learning that the employee will need to miss work due to pregnancy (for either the expectant mother or the expectant father). That way you are protecting and tracking all pregnancy-related absences. When the baby is actually born, you could take the position that the existing certification covers the post-childbirth leave **or** you could require a new certification. I don't think I've ever come across an HR professional who requires a second certification in these circumstances.

In my experience, however, most employers aren't interested in tracking intermittent pregnancy-related absences. They tend to wait until closer to the anticipated due date to ask for certification. For example, they might wait until the employee starts missing work on a regular basis due to pre-natal appointments (which tends to happen a month or two before the due date). Since the employee is seeing her doctor on a regular basis, she should have ample opportunity to get the certification filled out. I would not recommend waiting until after the baby is born to request medical certification.

There are all kinds of factors that could change the analysis. For example, what if you know that a newly pregnant employee won't qualify for leave when she gives birth? In that situation, you may want to start the FMLA process sooner so that the employee knows well in advance that she won't have FMLA leave available to cover her maternity leave. In general, however, it's best to have a uniform timeline.

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