

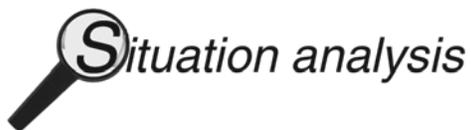
Requesting doctor's notes

Employers can ask employees to provide a doctor's note for absences due to illness. Even if the company does not normally require a doctor's note, it can impose the requirement for suspicious circumstances, such as calling in sick on the same day a request for vacation was denied. However, the note should only verify that the employee had a visit on a particular day. It should not contain medical information or a diagnosis, since requesting that information is likely to be an unlawful medical inquiry under the Americans with Disabilities Act (that is, a request that is not job-related and consistent with business necessity).

Keep in mind that employees may not visit a doctor for illnesses such as a cold, flu, or foodborne illness, even though they may legitimately be absent. The employee might even be able to obtain a note after the fact, or the doctor may simply take the employee's word regarding the illness (such as claiming to have a severe migraine).

A requirement for a doctor's note may inconvenience the employee by requiring a visit to a medical professional, but it may not solve a problem of suspected abuse. Also, a clever employee might claim that he or she was caring for a family member who was ill, which can make the verification more challenging.

Also, don't create the impression that as long as the employee provides a doctor's note, any sick time will be excused. Many employees already have the mistaken impression that their company cannot impose discipline for excessive absences as long as they have a doctor's note. In reality, only certain absences must be excused (such as FMLA absences or time off granted as an accommodation for disability). For instance, an employee might suffer from regular bouts with the flu, but even if the employee provides a doctor's note each time, the company may determine that the absences are excessive.



Problems with doctor's notes

Although employers can require a doctor's note, there are some restrictions under the Americans with Disabilities Act (ADA) because that law was written to prohibit employers from obtaining medical information that is not job-related and consistent with business necessity.

For example, it may be acceptable to request a note which says something generic like "[name of employee] visited the doctor on [date]." A doctor might not specifically tell the employee to stay home for a certain number of days, but it could still be reasonable for the employee to do so. If an employee has a severe case of the flu and is suffering from fever and dehydration, a doctor may recommend bed rest and drinking liquids. However, the doctor won't necessarily know whether the individual will recover in one day or three days (or longer).

Even a basic doctor's note might result in the unintentional acquisition of medical information. For example, suppose an employee is suffering from depression and visits a psychiatrist who prescribes a sleeping aid. If the note indicates that the employee visited a psychiatrist, the company probably gained knowledge that the employee has a mental or psychological condition, even if the nature of the condition wasn't described.

Employee Relations Essentials

The other issue to keep in mind is whether a doctor's note is necessary. An employee who suffers from the flu might not visit a doctor and won't be able to provide a note. However, the company may not want that person in the office, potentially spreading the condition. Allowing the person to stay home may actually be better for the team.

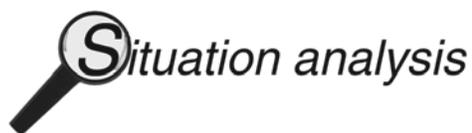
A company could simply declare that paid sick leave is not available in certain cases, and the absences will be unpaid. Many employers have a policy of denying holiday pay if an employee calls in sick on the day before or after the holiday. Similarly, it would be reasonable to deny the use of paid sick leave if the employee calls in on days when vacation requests were denied. The reduced paycheck might be more of a "discouragement" than having to visit a doctor (although a doctor's visit can also impose some "out of pocket" costs for the employee).

In addition, the company might clarify that if the circumstances of an absence are suspicious, the time off will be unpaid and the employee will be subject to discipline (under an assumption of sick leave abuse) unless the employee can verify that the sick leave was legitimate. For example, an absence might be suspicious if the employee:

- Takes the day off before or after a holiday,
- Calls in sick on the same days each year (perhaps during a state festival or opening weekend of fishing season),
- Has a vacation request denied and calls in sick on those days,
- Has an unusual number of sick days on Fridays or Mondays, or
- Otherwise creates suspicion or shows an unusual pattern of sick leave use.

In those cases, the use of paid sick leave could be denied. Further, the company might automatically determine that these suspicious absences are unexcused unless the employee can substantiate the absence. This might mean providing a doctor's note or some other verification, depending on the circumstances.

If the employee can provide verification, the absence would be excused (not subject to discipline) and the employee might even be allowed to use paid sick leave. However, if the employee cannot provide verification, or if the doctor's note is suspicious (e.g., the employee was absent on Thursday and Friday, but the doctor's note was obtained on Sunday afternoon), then a company might still determine that the time is unexcused and unpaid.



Catching fraudulent leave

An employee requests a week of vacation during the busy season, and her request is denied. Mysteriously, when the dates roll around, she calls in sick with the flu. Similar concerns might arise when an employee who has long protested being scheduled on Saturdays suddenly finds religion — one that doesn't allow him to work on Saturdays. In both circumstances, the company may wonder if the employee's requests could be a ploy.

Unfortunately, getting to the bottom of such matters can prove to be a difficult task.
