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FMLA AND FITNESS FOR DUTY

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An employer may require an employee to provide a “fitness for duty” certification when he or she returns from taking leave under the Family and Medical Leave Act (FMLA), assuring that employees are able to safely perform all job duties when they return to work. Employers should be careful to comply with Department of Labor guidance on such certifications and, where this guidance feels unduly restrictive (which happens), consult with counsel on how best to proceed. The requirement for certifications should be uniformly applied to all similarly situated employees, and an employer should provide prior notice that a fitness for duty certification is required upon an employee’s return to work. Here is more from BT Currents on this topic. Employers also need to ensure compliance with the Americans with Disabilities Act (ADA) in this area. In *White v. City of Los Angele s*, an employee sued her employer for seeking its own medical evaluation of the employee’s fitness for duty. The employee argued that because her doctor had already certified her to return to work, the employer’s request for a re-evaluation violated the FMLA. The Court disagreed and held that an employer’s re-evaluation complies with both the ADA and FMLA if the employer can demonstrate that its request was “job related and consistent with business necessity.” Ultimately, requesting fitness for duty certifications is an excellent – and arguably necessary – way for employers to ensure that their employees can safely perform their jobs after returning to work. While these notifications are likely designed in the law to protect the employee, they also protect the employer from potentially exposing itself to liability for an employee’s inability to work safely. However, these do present hazards to navigation and employers should proceed carefully in what can be complicated situations.

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