

Employment Law Q&A: 5 ways to address intermittent leave under the FMLA



Ryan Neumeyer | Monday, October 2, 2017

Administering intermittent leave under the Family and Medical Leave Act (FMLA) can be a frustrating experience for employers to deal with. An understanding of what the law covers – and a good dose of patience – can help an employer through FMLA challenges.

Q: How can my company address or even prevent abuse of FMLA intermittent leave or reduced schedule abuse?

A: First, it's important to understand what the FMLA covers.

- The FMLA provides certain employees with up to 12 workweeks of unpaid, job-protected leave per year.
- The FMLA allows employees to take leave in consecutive days, “intermittently,” or on a “reduced leave schedule.” These are two different ways to use FMLA time that are often confused.
 - **Intermittent leave** is FMLA leave taken in separate blocks of time for a single illness or injury.
 - **Reduced leave schedule** reduces an employee’s usual number of working hours per workweek, or hours per workday. It is a change in the employee’s schedule for a period of time, normally from full-time to part-time.

Intermittent and reduced schedule leave may be taken when medically necessary:

- To care for a seriously ill family member.
- Because of the employee's serious health condition.
- To care for a newborn or newly placed adopted or foster care child only with the employer's approval.

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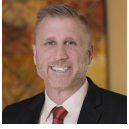
Only the amount of leave actually taken while on intermittent/reduced schedule leave may be charged as FMLA leave. Employees may not be required to take more FMLA leave than necessary to address the circumstances that cause the need for leave. Employers may account for FMLA leave in the shortest period of time that their payroll systems use, provided it is one hour or less.

These types of leave can wreak havoc on employer's scheduling and overall production. In addition, the nature of intermittent leave and reduced schedule leave can, at times, lend itself to employee abuse. One of the most difficult issues that employers have to deal with is administering intermittent or reduced schedule leave and curbing abuse.

5 FMLA compliance strategies that will assist in curbing abuse:

1. **Address scheduling issues early in the process.** Employees needing intermittent/reduced schedule leave for foreseeable medical treatment must work with their employers to schedule the leave so as not to unduly disrupt the employer's operations, subject to the approval of the employee's health care provider. Make sure that employees requesting intermittent or reduced scheduled leave for planned treatment understand the process for working with the employer to properly request and schedule that time off.
2. **Provide the healthcare provider with necessary information.** Make the employee's healthcare provider aware of the employee's job duties and inquire as to whether there are any accommodations that would allow the employee to perform job functions.
3. **Recertify FMLA leave every six months.** The FMLA allows an employer to recertify the FMLA qualifying condition every six months. Make sure that you do so. Keep track of the employee's use of FMLA leave and submit it to the physician to determine whether the leave was consistent with the employee's need for such time off for the qualifying condition.
4. **Enforce company call in policies and procedures.** Employers can require employees using intermittent FMLA to use the standard company call in procedure when using FMLA time. So, make sure employees understand that requirement. The call in procedures should be applied consistently to all employees whether on FMLA leave or not. Further, policies and procedures must be uniform and not an ad-hoc supervisor-per-supervisor policy. Elements of a good notice procedure include:
 - Submit requests for foreseeable leave in writing.
 - Use a uniform call-in number to notify the employer of absences that are unforeseen.
 - Require unforeseeable absences to be reported within a definite time window.
 - Have requests for leave are submitted to a designated individual.
 - Ensure that proper FMLA **medical certification forms** are used, provided to, and returned by employees who make a request for leave.
5. **Consider a transfer when appropriate.** When intermittent leave is used for planned medical treatment, an employer may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate recurring periods of leave better than the employee's regular job.

The best way to address FMLA abuse is to ensure that your business has a sound FMLA policy. The employer must then make sure it uses the tools that are available to combat FMLA abuse. Elimination of FMLA abuse completely is not possible, but some planning and a little extra effort will go a long way to minimizing such abuse.



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