

HR Insights

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Employco USA, Inc.

Understanding FMLA Leave for Mental Health Conditions

Mental health is a growing concern in the workplace. Over the past few years, many employees have experienced mental health issues, such as burnout, depression, anxiety and substance abuse. Employers have responded by expanding mental health benefits, including adding mental health programs, increasing schedule flexibility, offering telemedicine options for mental health and providing more mental health education. Despite the amplified focus on mental health, employees' mental health issues are still commonly overlooked, especially since they may not be as readily apparent as physical ailments. However, in reality, employees may sometimes be unable to work because of their mental health issues.

While employers pursue various ways to support employees struggling with mental health issues, it's also important to be aware of and offer appropriate leave under the Family and Medical Leave Act (FMLA). The U.S. Department of Labor (DOL) recently [issued](#) a fact sheet relating to an employee's ability to use FMLA leave for their own or a family member's mental health condition. This article provides an overview of the FMLA, the DOL's guidance, FMLA assistance for employees struggling with mental health issues and ways employers can support their employees.

FMLA Overview

The FMLA provides job-protected leave for eligible employees of covered employers for their own or a family member's serious health condition. To be eligible, an employee must:

- Work for a covered employer
- Have worked for the covered employer for at least 12 months
- Have worked at least 1,250 hours for the covered employer during the 12 months prior to leave
- Work at a location where the covered employer has at least 50 employees within a 75-mile radius

The FMLA provides eligible employees with up to 12 weeks of unpaid leave, which may be taken continuously or intermittently. An employer must maintain the employee's group health benefits while on leave. Upon return, the employee must be restored to the same or equivalent job, meaning similar pay and responsibilities.

Leave for Mental Health Conditions

Eligible employees may take FMLA leave to address mental health conditions. Under the FMLA, a mental health condition is considered a serious health condition if it requires inpatient care or continuing treatment by a health care provider.

- **Inpatient care**—A serious mental health condition that requires inpatient care includes an overnight stay in a hospital or other medical care facility, such as a treatment center for addiction or eating disorders.

- **Continuing treatment**—A serious mental health condition that requires continuing treatment by a health care provider includes the following:
 - Conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment, either multiple appointments with a health care provider or a single appointment and follow-up care.
 - Chronic conditions that cause occasional periods when an individual is incapacitated and requires treatment by a health care provider at least twice a year.

Some mental health conditions satisfy both of the definitions of “disability” and “serious health condition.” Under the FMLA, a disability is a mental or physical impairment that substantially limits one or more major life activities. The FMLA uses the Equal Employment Opportunity Commission’s (EEOC) regulations under the Americans with Disabilities Act (ADA) to define and determine if a condition is a disability. According to the EEOC, conditions that “should easily be concluded” to be “substantially limiting” include major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive-compulsive disorder and schizophrenia. Periodic conditions are considered disabilities if they substantially limit a major activity when active.

Employers may require employees to submit a certification from a health care provider to support their need for FMLA leave. While the certificate does not require a diagnosis, the information provided must be sufficient to support the need for leave.

Family Member With a Mental Health Condition

The FMLA permits eligible employees to take leave to provide care for a spouse, child or parent who is unable to work or perform other regular daily activities because of a mental health condition. Providing psychological comfort and reassurance that would benefit a family member with a serious health condition who is receiving inpatient or home care is covered under the FMLA.

FMLA leave to provide care for a child with a serious health condition is generally limited to providing care for a child

under the age of 18. However, a parent may use FMLA leave to care for a child 18 years and older who is in need of care for a serious health condition if the adult child is incapable of self-care due to a mental or physical disability. The disability does not need to have occurred or been diagnosed before the age of 18; it may start at any age.

Employers’ Duty of Confidentiality

The FMLA requires employers to keep employee medical records confidential and maintain them in separate files from regular personnel files. Employers also must maintain employee records with confidentiality as required under other laws, such as the ADA or the Genetic Information Nondiscrimination Act. However, employers may inform supervisors and managers of an employee’s need for leave or if an employee requires work restrictions or accommodations.

Employees Are Protected from Retaliation

Employers are prohibited from interfering with, restraining or denying an employee’s exercise—or attempt to exercise—any FMLA right. This includes refusing to permit an employee to take FMLA leave or disclosing—or threatening to disclose—an employee’s or their family member’s mental condition to discourage them from taking FMLA leave.

Employers Can Support Their Employees

Employers can support employees struggling with mental health conditions by recognizing situations where an employee’s behavior creates difficulties or concerns at work. Employers can train managers to recognize when an employee may need FMLA leave for mental health issues. By speaking to that employee, an employer can identify any assistance that may help the employee perform their job or manage their mental health. In some cases, an employer may be obligated to treat an employee’s behavior as a request for FMLA leave.

Summary

By understanding FMLA requirements for mental health conditions, employers can better support their workforce and avoid potential violations. In many situations, employees may be entitled to protections under other federal employment laws, state family and medical leave laws and collective

bargaining agreements. Accordingly, employers are encouraged to discuss any specific FMLA-related questions with an employment attorney.

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