

Curbing Family Medical Leave Act (FMLA) Abuse

Article By:

Benjamin L. Riddle

The **Family Medical Leave Act** (“FMLA”) permits **eligible employees** to take up to 12 work weeks of leave during a 12-month period if a serious health condition makes the employee unable to perform the functions of his or her position. When an employer suspects that an employee is abusing the FMLA leave, employers may feel caught in a classic Catch-22. They can ignore the abuse and operate with a reduced workforce, or subject themselves to an interference or defamation suit if they decide to challenge or confront the employee about the questionable leave.

If an employer suspects **FMLA abuse**, the first step in curtailing that abuse is to review the employees’ eligibility for FMLA leave. Oftentimes employers (or their HR managers) do not distinguish between employees who qualify for it and those that do not. To be eligible for FMLA leave, an employee must:

- Be employed at a worksite within 75 miles of which that employer employs at least 50 people;
- Have worked at least 12 months (which do not have to be consecutive) for the employer; and
- Have worked at least 1,250 hours during the 12 months immediately before the date FMLA leave begins.

After determining if an employee is eligible for FMLA leave, an employer should next consider the nature of the request. Eligible employees are entitled to leave only for serious medical conditions and/or to care for certain individuals (spouse, child, or parent) with serious medical conditions. Employers serious about preventing abuse should never just take an employee’s word for it that the condition is serious. Employers can, and should, require employees to submit a medical certification of a health care professional that confirms the employee’s need for leave. If requested, the employee is responsible for providing a complete and sufficient certification, generally within 15 calendar days after the employer’s request. The employee is responsible for paying for the cost of the medical certification and for making sure the certification is provided to the employer.

It is of course important to ensure that policies and procedures are up-to-date. Current regulations make employers responsible for ongoing communication with employees requesting or taking FMLA leave. By outlining the rights and responsibilities for both the employer and employee, the potential for abuse can be minimized.

Unfortunately, even employers who take preventive steps to curb abuse may still be occasionally affected by employees' deceptive practices.

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