

Only 3 full days of incapacity will trigger FMLA leave

Issue: Court raises threshold for employees to qualify for FMLA leave.

Benefit: Workers can take FMLA leave if they have a serious condition causing three consecutive full days of incapacity, not partial days.

Action: Notify managers of this rule. If your FMLA policy refers to the "three day" rule, include the word "full."

When it comes to judging whether an employee's serious health condition qualifies for Family and Medical Leave Act (FMLA) protection, require at least three consecutive, full calendar days of incapacity. Partial days won't trigger FMLA protections, a federal court has ruled.

Recent case: A hospital account rep missed several partial workdays over a 10-day period due to an injury, so she was fired due to excessive absenteeism. She claimed her partial days of incapacity met the definition of a "serious health condition," so she sued under the FMLA. But a district court and appeals court sided with the hospital, saying the employee's ailment didn't rise to the "serious" level.

Court's reasoning: FMLA regulations say a serious condition, among other things, must involve "a period of incapacity (i.e. inability to work, attend school, perform other regular daily activities) of more than three consecutive calendar days."

The appeals court added to this definition, saying three days means three full days. Specifically, "calendar day" refers to a "whole day, not to part of a day," the court said. (Russell v. North Broward Hospital, No. 02-13343, 11th Cir., 2003)

Final note: Apply that "three full days" requirement only for the initial period of deciding whether a condition is serious enough to trigger FMLA. Once a condition is FMLA-protected, any subsequent absence can be for less time, as long as it's based on the original medical condition.