

# Does the FMLA cover leave for 'stress'?

**Q. One of our employees has asked to go on medical leave due to “stress.” Does stress qualify as a condition that requires leave?**

**A.** As a general matter, under the FMLA, employees who claim leave based on their own medical condition, such as “stress,” must show the leave is

1. the result of a serious health condition that
2. makes the employee unable to perform the functions of his or her job. If either of these elements is not met, the employee is not entitled to FMLA leave.

Before the U.S. Department of Labor revised the regulations for implementing the FMLA in 2009, the law specified that mental illness “resulting from stress or allergies” may be a serious health condition. That language was deleted in the current regulations to clarify that a mental illness, regardless of its cause, can be a serious health condition under the FMLA if all the regulatory requirements are met.

Currently, under the FMLA, a “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

If an employee did not receive inpatient care for a medical condition, the employee must establish that he or she received “continuing treatment” by a health care provider to qualify for FMLA leave. To do so, the employee must first show he or she was incapacitated for more than three consecutive calendar days. If an employee cannot show that he or she was so incapacitated that it was impossible to perform the job, the employee is not covered under this section of the FMLA.

In several cases in which an employee claimed to suffer from a serious health condition due to stress, the individual failed to show incapacitation. For example, in *Cole v. Sisters of Charity of the Incarnate Word*, the Eastern District of Texas found that an employee failed to establish that she suffered from a serious health condition based on stress when she provided no evidence that she was unable to perform the functions of her job.

Furthermore, once an employee establishes incapacitation, he or she must still establish that he or she received “continuing treatment” for the condition. Specifically, for a stress-related condition to qualify as a serious health condition under the “continuing treatment” prong of the FMLA, courts have held that the continuing treatment must relate back to the condition that initially caused the incapacity to work.

The FMLA does not protect an employee who claims his or her employer, due to increasing stress, “exacerbated” the employee’s condition.

Ultimately, if the employee presents a stress-related condition and you are not sure it qualifies as a serious health condition, you must avoid playing doctor. Review the WH 380 form (Certification of Healthcare Provider) to determine whether the condition meets the requirements under the FMLA and its implementing regulations. If the form doesn’t provide sufficient information, request clarification.