

Can we put travel limits on workers taking FMLA?

Q. Do we have to let an employee leave the United States to visit his home country while on family medical leave? Are there restrictions? – Terry, New Jersey

A. Employees are entitled to take FMLA leave to care for their own or a close family member's serious health condition, or to care for a newborn or newly adopted child. If an employee qualifies for leave, there is no restriction on where the leave is taken. For example, if an employee takes FMLA leave to care for a seriously ill parent, the parent may live out-of-state or even outside the United States. Similarly, employees can leave town to seek treatment elsewhere for their own serious illness.

Your question seems to be focused on the potential for FMLA fraud. If employees are taking FMLA leave to care for their own personal health problems, it may seem inappropriate to use that time to visit another country. To determine whether he or she is taking advantage, start with the underlying health condition. Does it appear the employee would be unable to work, no matter where he or she was?

For example, if the employee is recovering from shoulder surgery and can't perform lifting tasks at the warehouse, the fact that he may be spending some of his FMLA leave in his home country does not seem fraudulent. On the other hand, if the employee suffers from periodic migraines, it does not seem reasonable for him to take four weeks of leave to visit his home country and call it FMLA leave. In fact, the leave certification may not render him eligible for an unbroken block of time off of that length.

Remember, too, that not all FMLA-qualifying serious health conditions are strictly physical. Is the employee critically ill, or clinically depressed, such that time away from home to visit his elderly parents may help his psychological state?

If you are concerned that an employee is abusing FMLA leave, take steps at the certification phase to determine whether the employee can perform some of the job functions while treating the condition. Each employee's circumstances will be unique and one employee's trip to his home country may be fraudulent while another's is legitimate.

Note: Also check your state law, which may offer employees additional rights to take leave to care for a family member's serious health condition and cover a broader array of businesses than does the FMLA.