

# FMLA and mental health — what you need to know as an employer

Most employers are familiar with managing the FMLA leave process for physical health conditions, but there can be a lot of confusion surrounding mental health and FMLA leave. Some of this is due to the fact that mental health conditions are “invisible illnesses” and their symptoms may be less apparent to others when compared to physical ailments.

Taking a “mental health day” has also become synonymous with taking a rest day to get away from the stresses of work or school — which can be important, but is probably not a valid cause for FMLA leave.



There is still a stigma around mental illness and seeking treatment, but employers need to cast aside their own misconceptions about mental health when handling FMLA requests. If you're unsure of how to handle FMLA leave of absence requests related to mental health, keep reading to learn more about when a mental health condition counts as a serious health condition under the FMLA.

## FMLA overview

The Family and Medical Leave Act (FMLA) is a law that allows eligible employees to take job-protected unpaid leave in relation to a qualifying serious health condition or other eligible family reasons. The FMLA grants employees up to twelve weeks of leave within a single 12-month period, either as extended leave or

intermittent leave.

Eligible reasons for FMLA leave include:

- The birth of a child or bonding with a child within the first year of their life.
- Possession of a serious health condition that makes the employee unable to perform the essential functions of their job.
- Caring for a family member with a serious health condition.
- The placement with the employee of a child for adoption or foster care.

Upon looking at that list, many people may assume that the FMLA does not cover leave to deal with mental health issues, but employers should be aware that mental health disorders do often qualify as serious health conditions.

## **When can employees use FMLA for mental health?**

Under the FMLA, mental health conditions are treated just like physical health conditions. Therefore, employees can use FMLA leave in relation to mental health conditions as long as they meet the guidelines for categorization as a serious health condition. The FMLA defines a “serious health condition” as an illness, injury, impairment, or condition that requires inpatient care or ongoing medical treatment.

Eligible employees can take up to 12 weeks of unpaid leave for treatment or when the condition flares up. FMLA leave can be taken either as one extended leave period or as intermittent leave. Some people also need a combination of the two, such as taking extended leave for something like hospitalization and then intermittent leave for follow-up care.

Many employees that use FMLA leave for mental health conditions take their leave intermittently. For example, conditions like depression can make it hard for employees to get out of bed in the morning, and they might use FMLA to take time off on especially tough days or to come in late during a depressive episode. These employees should still follow any call-out or late arrival procedures to notify their employers.

However, it is worth noting that while anyone can benefit from the occasional “mental health day,” FMLA leave for mental health is intended for employees that need time off to receive treatment for their mental health or who are experiencing a period of incapacity due to their condition and are temporarily unable to perform the essential functions of their job. Employees taking a general mental health day to rest, not related to a serious health condition, will generally need to use PTO instead of FMLA leave.

FMLA leave can also be used to care for an immediate family member dealing with a serious mental health problem. This may include taking a family member to appointments or participating in family counseling or caseworker meetings as required for the patient’s recovery. The U.S. Department of Labor (DOL) generally considers family to be a spouse, child, or parent. This includes children of any age, not just those under 18.

## **What mental health conditions qualify for FMLA leave?**

Any mental health condition that meets the base criteria for classification as a “serious health condition” may

qualify for FMLA leave. Some conditions that may necessitate FMLA leave include anxiety disorders, major depression, bipolar disorder, post-traumatic stress disorder, and schizophrenia.

Employers should avoid making a judgment of the validity of an employee's leave request based on the diagnosis. In fact, sometimes the specific diagnosis may not even be provided. Healthcare providers are allowed, but not required, to provide a diagnosis of the patient's health condition as part of the medical certification process.

The certification forms direct providers to indicate how the employee meets the criteria of a serious medical condition and provide a space to explain how the condition would impact the employee's ability to perform their job or what form of care they will be providing to a relative. This is the information that employers should base their determinations on.

### **Does stress or burnout qualify as a serious health condition under the FMLA?**

Employee burnout and stress are very common issues, but should you allow employees to take FMLA to deal with them? The answer is that it depends.

Stress on its own does not necessarily qualify for FMLA leave, as stress is not a specific medical condition. However, stress can be a symptom of a serious health condition such as generalized anxiety disorder or post-traumatic stress disorder. There are also certain chronic health conditions that may make employees more prone to burnout.

For example, neurodivergent workers including those with autism or ADHD can be more prone to burnout due to the nature of their conditions. Employees may also experience heightened levels of fatigue as a symptom of a physical or mental health condition, making them more easily prone to burnout.

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 needed because of a serious health condition that renders them unable to perform at least one essential function of their job. Currently, the FMLA defines a "serious health condition" as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Employees should provide a medical certification form verifying their need for FMLA leave.

### **Do substance use disorders qualify for FMLA Leave?**

Substance use may qualify as a serious health condition if it meets certain criteria.

For example, employees may take leave under the FMLA for substance use treatment that is administered by a health care provider. Employees may take time off for rehabilitation programs and therapy related to their substance use.

On the other hand, FMLA does not cover time off related to substance use. If an employee is late or calls out due to a hangover or because they overslept from using drugs, they aren't entitled to FMLA leave and can also still be written up for violating the company's attendance policy if applicable. However, if an employee needs to come in late because they need to stop at a methadone clinic in the morning as prescribed by a medical provider, employers will generally have to accommodate that.

Employers may not discipline employees for requesting FMLA leave to seek treatment for substance use, but they can continue to enforce their alcohol and drug policy. If employees come to work under the influence and in violation of established company policies, they may be written up, suspended, or terminated even if they have requested FMLA leave to seek treatment.

## Mental health and the ADA

In addition, employers should keep in mind that most mental illnesses deemed “serious health conditions” under the FMLA will also qualify as a disability under the Americans with Disabilities Act (ADA). Under the ADA, a disability is classified as a physical or mental impairment that substantially limits one or more major life activities. Employees with a condition that meets that definition may be entitled to reasonable accommodations in order to be able to perform their job duties. These ADA accommodations can include reasonable changes to the employee’s schedule, work environment, or job duties.

The ADA can also grant additional leave if an employee runs out of, or is not eligible for FMLA leave. They may request time off as a reasonable accommodation under the ADA. For example, the FMLA requires an employee to have worked for a covered employer for at least 12 months and 1,250 hours, but there is no minimum service time for the ADA. Therefore, newer employees may need to require leave under the ADA instead of the FMLA for the first year.

Employers should consider this request just as they would any other reasonable accommodation request. If it would pose undue hardship to the business it may be denied, but human resources should engage in an interactive process and work with the employee to explore alternative options if ADA leave cannot be granted.