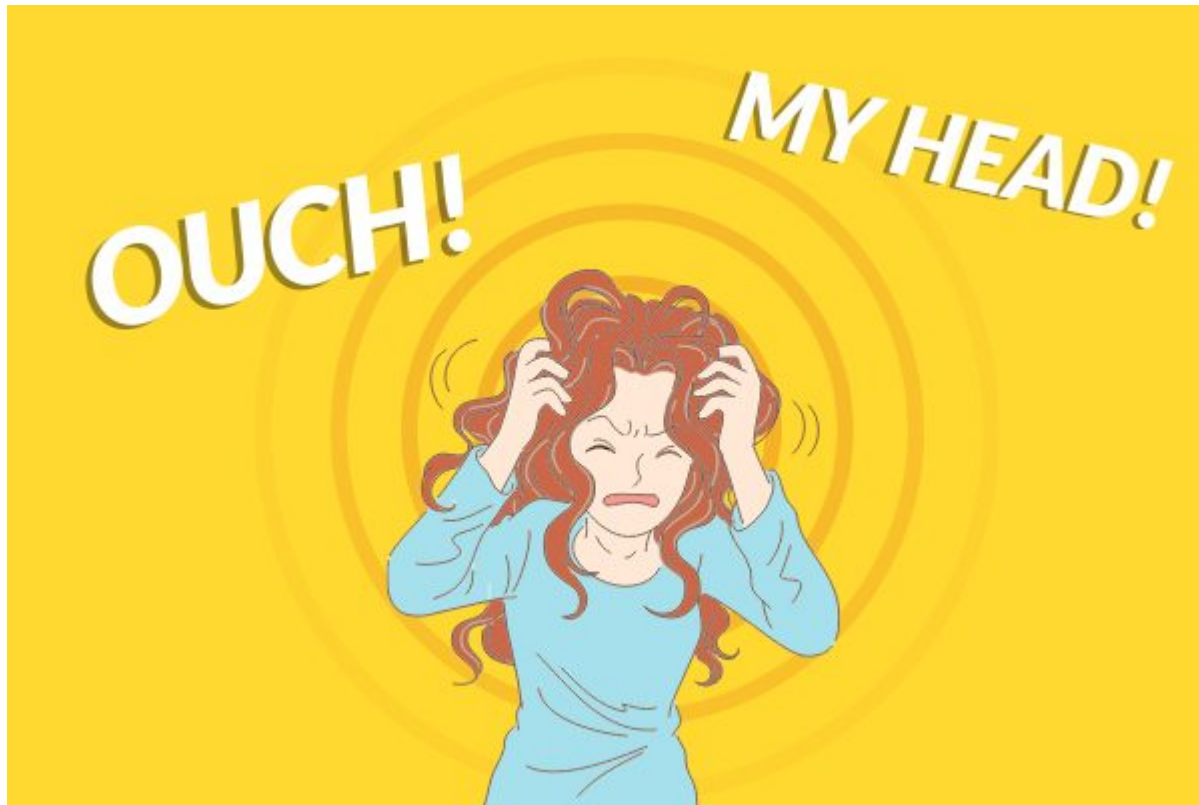


# How to manage FMLA leave for employees with migraines

The Family and Medical Leave Act (FMLA) allows eligible employees to take job-protected unpaid leave while they are incapacitated by or seeking care for a serious health condition. There is often confusion about what exactly qualifies as a serious health condition. Invisible illnesses like migraines often receive the most scrutiny, as their severe impact on the employee may be less apparent to employers when compared to more visible health conditions. However, that doesn't mean they don't qualify for FMLA leave.

Migraines are more than just headaches. They are a neurological disorder that can severely impact individuals. The [Mayo Clinic](#) defines a migraine as a "headache that can cause severe throbbing pain or a pulsing sensation, usually on one side of the head". Migraines are also often accompanied by nausea, vomiting, and light sensitivity. These symptoms often come on abruptly and understandably can make it incredibly difficult for an employee to work.



Migraines are a relatively common medical condition, so employers may see migraine FMLA requests somewhat frequently. If you're not quite sure how to handle them, keep reading to learn more about FMLA eligibility for migraines and how to process FMLA requests related to the condition.

## **What is the Family Medical Leave Act?**

The Family and Medical Leave Act (FMLA) is a federal labor law that grants eligible employees the ability to take up to 12 weeks of job-protected unpaid leave within a 12-month period for qualifying family or medical purposes. It can be used for bonding with newborns, adopted children, and foster children, to care for a sick family member, or when an employee is suffering from a serious health condition.

## **FMLA eligibility**

Before worrying about whether or not a condition qualifies as a serious health condition, it's a good idea to verify that the employee is even eligible for FMLA leave. First, you'll want to verify that your organization is considered a covered employer and subject to FMLA requirements.

### **Organizations must fall under one of the three categories below to qualify as a covered employer:**

- Private-sector employers with 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including a joint employer or successor in interest to a covered employer;
- Public agencies, including a local, state, or federal government agency
- Public or private elementary or secondary schools

Once it has been determined that the organization counts as a covered employer, there are still a few more

conditions that must be met. An employee that works for a covered employer must have worked for the employer for at least 12 months (not necessarily continuously), have clocked in at least 1,250 hours over the last 12 months, and be assigned to a work location with at least 50 employees within 75 miles.

If the above criteria are not met, an employee will not be eligible for FMLA leave for any health condition, including migraines. However, migraines can also be considered a disabling condition and qualify for scheduling and workplace accommodations under the Americans with Disabilities Act (ADA).

## **Can employees take FMLA leave for migraines?**

Migraines often get lumped in with standard headaches in people's minds. This causes both employers and employees to question whether they are severe enough to warrant a sick day or an FMLA leave request.

Standard headaches are not considered a serious health condition unless they are a symptom of a larger medical condition, but migraine headaches are commonly considered a serious health condition under the FMLA. Migraines can cause debilitating pain that can incapacitate an employee and leave them unable to go to work or finish their workday. Employees suffering from chronic migraines will typically take intermittent leave so that they can miss work when they have a bad migraine flare-up. Though some may also request leave for a reduced schedule.

## **What to do if an employee requests FMLA leave for migraines**

Here is how to handle an FMLA request related to migraines.

### **Provide a notice of eligibility**

Within five business days of becoming aware of an employee's potential eligibility for FMLA leave based on their migraines or other condition, employers must provide the employee with an eligibility notice. The eligibility notice does not include a determination about whether or not the employee's condition qualifies for FMLA leave. Instead, it simply states whether the other eligibility requirements, such as length of service or working for a covered employer have been met.

### **Request medical certification**

Once an employee puts in a request for FMLA leave for migraines, the employer can request medical certification. Medical certification involves getting an FMLA certification form completed by a healthcare provider. The U.S. Department of Labor (DOL) [Form WH-380-E](#) can be used for the certification of an employee's serious health condition.

The exact information that employers receive regarding the condition will vary based on the provider and any applicable state and local laws. Some states do place restrictions on whether the provider completing the form may disclose personal health information such as the specific diagnosis or treatment plan.

The provider should provide information on the employee's estimated period of incapacity, the type of absence anticipated, the need for FMLA leave, and how the condition impacts the employee's ability to perform their essential work functions.

Requesting medical certification allows employers to verify that the employee does have a valid serious health condition that warrants approval for FMLA. Employers may also request re-certification to verify an employee's continued FMLA eligibility. Employers may request recertification every 6 months. If the minimum expected duration of the condition listed on the initial certification is less than 6 months, they may request recertification when the expected duration has expired (though no earlier than 30 days from the initial certification). Though

migraines are typically long-term, chronic issues and thus often have longer minimum durations listed.

## **Establish a call out procedure**

Migraine sufferers often take their available FMLA time off as intermittent leave to allow employees to call out when they have a migraine that impedes their ability to work. Since migraines generally come without a warning, employees will generally not know in advance when they need to use their FMLA days. Employers should establish a call-out procedure for employees with intermittent FMLA leave to follow in such circumstances.

The employee should call in based on the employer's preferred communication method and call out policies where possible. When an employee is approved for FMLA leave, it's a good idea to remind them of the expectations for who they should call or message. Employees should also be directed to state that they are calling out in relation to the medical condition for which they have been approved FMLA leave, or to simply state it's an FMLA absence. This helps employers track FMLA absences versus standard sick leave for common colds.

## **Be open to additional accommodations**

Migraines can be triggered by things like scents, noise, or lights. Specific triggers vary among migraine sufferers, but there are often ways to make the workplace more accommodating for employees that deal with migraine headaches.

This [employer self-assessment form](#) from Migraine at Work can be a good starting point for evaluating ways to make your workplace more inclusive and comfortable for migraine sufferers. Accommodations do not take the place of FMLA leave, but they can help make the environment feel more safe and supportive for migraine sufferers. Plus, reducing the frequency of migraines brought on by workplace triggers such as screen glares or lights will benefit both the business and the employee.

## **Migraines and FMLA abuse**

Migraine-related FMLA requests tend to get a bad rap from employers, with frequent concerns about potential FMLA abuse. However, it's important to avoid singling out migraine sufferers, as any medical condition may be used for FMLA abuse.

Instead, employers should be using the same techniques that they would for any employee on FMLA leave such as requesting re-certification on a regular basis and documenting absences carefully. It's best to seek legal advice when FMLA abuse is suspected, as terminating employees for FMLA abuse can lead to legal challenges down the line.

**Additional resource:** Read more about [FMLA requirements](#) and what they mean for your business.