

Does the FMLA cover intermittent leave for in vitro fertilization?

Q. One of my employees has informed me that she is about to begin undergoing in vitro fertilization (IVF) treatments. She requested some intermittent time off from work. Am I required to grant her request?

A. While it is up in the air whether the FMLA requires time off for IVF or other fertility treatments, other laws offer more concrete answers.

For example, the 7th Circuit, in *Hall v. Nalco Co.*, held that an employee terminated because she took time off to receive IVF treatments could pursue a Title VII sex discrimination claim. In the court's words, "Employees terminated for taking time off to undergo IVF —just like those terminated for taking time off to give birth or receive other pregnancy-related care—will always be women. This is necessarily so; IVF is one of several assisted reproductive technologies that involves a surgical impregnation procedure Thus ... Hall was terminated not for the gender-neutral condition of infertility, but rather for the gender-specific quality of childbearing capacity."

Also, recent amendments to the ADA may make it easier for employees suffering from infertility to qualify for disability discrimination protections.