

Managing Intermittent FMLA Leave Part I

Given the changes to the Family Medical Leave Act (FMLA) leave rules, the management of intermittent leave is somewhat more restricted than it was previously. Most of the time, intermittent leave is for medical conditions that may require long term treatment or for chronic conditions. Setting aside the issue of evaluating any ADA claims, the county must first seek to evaluate and manage the extent and frequency of the FMLA until it is used up, or until the employee is returned to work.

Some key steps to take include the following:

1. No FMLA absence can truly be “unanticipated” these days—so formulate a plan for coverage. Develop an on-call, part time or casual work group to help fill in for the absences.
2. Enforce your “no moonlighting” policy consistently and always. Especially review moonlighting practices reported in light of how intermittent leave would impact the primary county job of your employees. If they are sick, consider if they are well enough to carry on a busy volunteer schedule for the county, for example.
3. When reviewing FMLA requests take the following steps to ensure the best result:
 - (a) Try to protect employee medical information from the direct supervisor. Ideally, the FMLA review should be done by an HR or health professional who is sworn to protect the privacy of any medical information.
 - (b) Review each medical certification or other documentation provided for accuracy, completeness, and rationality. If it does not make sense, provides incomplete information for you to make a schedule, or you don’t understand it, have a nurse case manager or other medical consultant review it. It is worth the extra fee. If it appears to be written by more than one person, or altered, fax a copy to the doctor for verification.
 - (c) Use the employer’s right to send the employee for a second opinion when necessary. Make sure you consult or at least make a list of unanswered questions for the employee to answer before you designate the specialist or other medical person you want the employee to see. Evaluate the cost of the second exam against the cost to the department of the employee being gone for several days, a month or indefinitely.
 - (d) If possible, have a conversation with the employee before using the second exam. While you can’t force an employee to sign a medical release of information, if you let them know that their request may be denied for lack of the right information, they may be willing to clarify for you what triggers their unexpected or intermittent need for medical care.
 - (e) For requests for intermittent leave that do not require a trip to the doctor each time, it might be prudent to get a second opinion on whether, when, or how much the employee could be expected to be absent from work. These situations are the most likely to allow for leave abuse, so be careful to get the what, when, where and how often up front.