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## Managing Intermittent FMLA Leave Part II

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 (continued from Part I, Vol.14 Number 5)

4. For FMLA leave for chronic conditions the employee must see a doctor at least twice per year. Require employees to notify you of these follow-up visits if they use intermittent leave. So you can coordinate a well-timed request for an allowable medical update form under the FMLA.
5. Make sure you notify each employee who requests and receives FMLA authorization (a) exactly how many hours they are authorized for (only enough to meet the “medical necessity” standard or to meet one of the other legitimate FMLA reasons as indicated on the forms); (b) the date they are to return from FMLA; and (c) whether or not you require a Return to Duty Fitness certification and whether or not that includes a “functional capacity exam” (commonly used in workers’ compensation and other job related medical screenings).
6. If an employee is scheduled to work, and has to use FMLA, it should be attributed to whatever paid leave accruals exist. If all have a zero balance, the employee should be notified immediately that they are on unpaid time and when it runs out.
7. Make sure your paid leave rules require the use or allotment of vacation, sick, and compensation time for pay during FMLA leave periods. Specify the order in which they are to be used, and follow that policy every time regardless of who the employee is or what the circumstances are.
8. On intermittent leave requests, get specific instructions on when those necessary treatments are, how and when the employee will notify you of them, or how often unexpected relapses, etc, might occur based on the patient’s history. If circumstances change, it is the employee’s duty to apply for and get a recertification based on those changed needs.
9. If an employee on intermittent leave seems to be having unexplained or unjustified pattern absences, you can send the certifying doctor an attendance chart with the following questions: Should they be missing these days due to their medical condition? Is it consistent with their treatment plan or schedule? Is it consistent with their consultations with you? While doctors might err on the side of filling out forms, they rarely are willing to be a party to deceit or fraud. The solution is to pose questions carefully.
10. Don’t force an employee to use overtime accumulations for FMLA (it violates DOL rulings), but strongly encourage them to do so as these hours are payable if they quit.
11. Don’t allow extra paid leave or overtime to be taken to supplement FMLA if it’s being used along with workers’ compensation payments. This rewards absences. However, you may allow its use for hours that are not covered by your workers’ compensation rules.