

What constitutes a valid request for FMLA leave?

Employers should know what constitutes a valid request by an employee to take Family and Medical Leave Act (FMLA) leave in order to evaluate such requests. Employees requesting FMLA leave need not use a specific form, but an employee must provide at least enough verbal notice to make the employer aware of the need for FMLA leave. It is recommended that employers require the use of a form. The employee must also provide the anticipated start date and duration of the leave.

The employee doesn't have to mention the act specifically; the employee only has to state leave is needed for a FMLA-qualifying reason. In some cases, the employee only needs to report he or she is ill, and the employer may need to determine whether the illness qualifies for FMLA leave. The employer may request documentation from the employee for the medical necessity certification process. Failure to cooperate may result in the employee waiving the right to leave.

What notice does an employee have to give an employer when the need for FMLA leave is foreseeable?

“An employee must provide the employer at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or of a family member. If 30 days notice is not practicable, such as because of a lack of knowledge of approximately when leave will be

required to begin, a change in circumstances, or a medical emergency, notice must be given as soon as practicable (29 C.F.R. §825.302).”

What notice does an employee have to give an employer when the need for FMLA leave is not foreseeable?

“When the approximate timing of the need for leave is not foreseeable, an employee should give notice to the employer of the need for FMLA leave as soon as practicable under the facts and circumstances of the particular case. It is expected that an employee will give notice to the employer within no more than one or two working days of learning of the need for leave, except in extraordinary circumstances where such notice is not feasible (29 C.F.R. §825.303).”

Conclusion

Notice of the leave does not have to come directly from the employee. A relative, friend, or other person acting on the employee's behalf may do so. Requests can be made by phone, fax, mail or e-mail.

Once the notice has been given, the employer is free to inquire further if it needs more information to determine whether FMLA leave is being sought, and to obtain details about the leave.

For more information, visit the Department of Labor's website at www.dol.gov or contact CTSI at 303-861-0507.