

HR COMPLIANCE OVERVIEW



DOL Frequently Asked Questions on FMLA Leave for Mental Health

An eligible employee may take leave under the federal Family and Medical Leave Act (FMLA) for their own serious health condition or to care for a spouse, child or parent because of their serious health condition.

The U.S. Department of Labor (DOL) published answers to [frequently asked questions](#) (FAQs) about FMLA leave for mental health reasons. This guidance makes clear that mental health conditions are considered serious health conditions under the FMLA if they require inpatient care or continuing treatment by a health care provider, such as an overnight stay in a treatment center for addiction or continuing treatment by a clinical psychologist. Chronic conditions such as anxiety, depression or dissociative disorders that cause occasional incapacitated periods and require treatment at least twice a year fall under the “continuing treatment” definition.

This Compliance Overview contains the FAQs.

LINKS AND RESOURCES

- DOL [FAQs](#) on mental health provisions under the FMLA
- DOL [Fact Sheet #280: Mental Health Conditions and the FMLA](#)

Highlights

- Mental health conditions can be serious health conditions.
- FMLA leave may be used for regularly scheduled psychologist appointments.
- FMLA leave may sometimes be used to care for adult children with mental health conditions.

Steps for Employers

- Keep employee medical records confidential and maintain them in files separate from more routine personnel files.
- Review policies to ensure that employees are protected from retaliation for taking FMLA leave for mental health reasons.

Provided to you by **Foundation Benefits**





FAQs

May I use FMLA leave when I am unable to work because of severe anxiety? I see a physician monthly for this condition to manage my symptoms.

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may take leave if you are unable to work due to a serious health condition under the FMLA. A chronic condition, whether physical or mental (e.g., rheumatoid arthritis, anxiety, dissociative disorders), that may cause occasional periods when an individual is unable to work is a qualifying serious health condition if it requires treatment by a health care provider at least twice a year and recurs over an extended period of time.

I am under the care of a psychologist and attend psychotherapy sessions regularly for anorexia nervosa. Is my leave for treatment related to this condition protected under the FMLA?

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may take leave for treatment visits and therapy sessions for the condition. Under the FMLA, you may use available leave when you are unable to work, including being unable to perform any one of the essential functions of your position, due to a serious health condition or when you are receiving treatment for that condition.

My daughter, who is 24 years old, was recently released from several days of inpatient treatment for a mental health condition. May I use FMLA leave for her care? She is unable to work or go to school and needs help with cooking, cleaning, shopping and other daily activities.

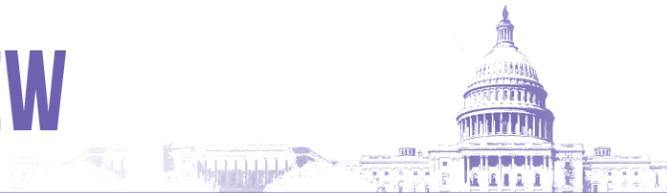
Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may use FMLA leave to care for your child who is 18 years of age or older if the child is incapable of self-care because of a disability as defined by the Americans with Disabilities Act (ADA), has a serious health condition as defined by the FMLA, and needs care because of the serious health condition.

A disability under the ADA is a mental or physical condition that substantially limits one or more of the major life activities of an individual, such as working. Major depressive disorder, bipolar disorder, obsessive-compulsive disorder and schizophrenia are a few examples of mental health conditions that may substantially limit one or more of an individual's major life activities when active. A mental health condition requiring an overnight stay in a hospital or residential medical care facility would be a qualifying serious health condition under the FMLA.

May I use FMLA leave to attend a family counseling session for my spouse, who is in an inpatient treatment program for substance abuse?

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may use FMLA leave to provide care for your spouse who is undergoing inpatient treatment for substance abuse. Care could include participating in your spouse's medical treatment program or attending a care conference with your spouse's health care providers.

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When my father passed away, my mother began to see a doctor for depression and needs assistance with day-to-day self-care because of this condition. Currently, I use FMLA leave to take her to her medical appointments, and my sister stays with her during the day. May I also use FMLA leave to help my mother with her day-to-day needs?

Yes. Assuming that you work for a covered employer and are eligible for FMLA leave, you may use FMLA leave to provide physical and psychological care to your mother. You do not need to be the only individual or family member available to help to use FMLA leave for her care. Caring for a family member under the FMLA includes helping with basic medical, hygienic, nutritional or safety needs and filling in for others who normally provide care.

My spouse is a veteran who is suffering from post-traumatic stress disorder (PTSD) since his honorable service discharge last year. May I use FMLA leave for his care?

Yes. An eligible employee who works for a covered employer may use military caregiver leave under the FMLA to care for a relative who is a covered veteran undergoing treatment, recuperating or in therapy for a serious injury or illness. A serious injury or illness is one that was incurred in the line of duty when the veteran was on active duty in the Armed Forces, including any injury or illness that resulted from the aggravation of a condition that existed before the veteran's service in the line of duty on active duty. The condition may manifest itself during active duty or may develop after the servicemember becomes a veteran, as may be the case with PTSD, a traumatic brain injury or depression, for example.

I use FMLA leave once a month for appointments with a mental health therapist. Is my employer required to keep my mental health condition confidential?

Yes. The FMLA requires your employer to keep your medical records confidential and maintain them in separate files from more routine personnel files. Your employer must also maintain your records with confidentiality as required under other laws, such as the ADA or the Genetic Information Nondiscrimination Act, where those laws also apply.

However, your supervisor and managers may be informed that you need to be away from work or if you have work duty restrictions or need accommodations.

The FMLA prohibits your employer from interfering with or restraining your right to take FMLA leave. Your employer is prohibited, for example, from sharing or threatening to share information about your health to discourage you or your coworkers from using FMLA leave.

My son is in the fourth grade and sees a doctor for attention-deficit/hyperactivity disorder. After I used FMLA leave to take my son to a behavioral therapy appointment for this condition, my employer sent me an e-mail informing me that I received a negative point on my attendance record. Can my employer punish me for using FMLA leave?

No. Employers are prohibited from discriminating or retaliating against employees for having exercised or attempting to

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exercise any FMLA right. Examples include using the taking of FMLA leave as a negative factor in employment actions, such as in hiring, promotions or disciplinary actions, or counting FMLA leave against employees in points-based attendance policies.

Source: U.S. Department of Labor