

Legal Update

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DOL Issues Guidance on FMLA and Mental Health Conditions

The Wage and Hour Division of the U.S. Department of Labor (DOL) has released new resources on workers' rights to leave under the federal Family and Medical Leave Act (FMLA) for mental health conditions. In a press release, the DOL said the publication of the new guidance was in recognition of Mental Health Awareness month.

New DOL Fact Sheet and FAQs

The new guidance includes:

- [Fact Sheet #280: Mental Health Conditions and the FMLA](#)
- [Frequently asked questions](#) (FAQs) on the FMLA's mental health provisions

Mental Health as a Serious Health Condition

An eligible employee may take FMLA leave for their own serious health condition or to care for a spouse, child or parent because of their serious health condition.

The new resources make 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.

The FAQs provide additional examples of situations that qualify for FMLA leave, including treatment sessions for anorexia nervosa and caring for an adult child with a mental health condition that meets the definition of disability under the Americans with Disabilities Act.

Highlights

- Mental health conditions can be serious health conditions.
- FMLA leave may be used for regularly scheduled psychologist appointments in certain circumstances.
- FMLA leave may be used to care for adult children with mental health conditions in certain circumstances.
- Employers may not retaliate against employees for taking FMLA leave for mental health reasons.

For Mental Health Awareness Month, the DOL has issued new resources explaining FMLA leave rights for mental health conditions.

Frequently Asked Questions

(Q) 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.

(Q) 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.

(Q) 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 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.

(Q) 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.

(Q) 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.

(Q) 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 (TBI), or depression, for example.

(Q) 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 Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA), 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.

(Q) My son is in the fourth grade and sees a doctor for attention-deficit/hyperactivity disorder (ADHD). 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 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.

Fact Sheet # 280: Mental Health Conditions and the FMLA

The Family and Medical Leave Act (FMLA) provides job-protected leave to address mental health conditions. This fact sheet explains when eligible employees of covered employers may use FMLA leave for their own or a family member's mental health condition.

ABOUT THE FMLA

FMLA leave is available to:

- **Eligible employees:** Employees are eligible if they work for a covered employer for at least 12 months, have at least 1,250 hours of service for the employer during the 12 months before the leave, and work at a location where the employer has at least 50 employees within 75 miles.
- **of Covered Employers:** Private employers are covered employers under the FMLA if they employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers or successors in interest to another covered employer. Public agencies, including a local, state, or Federal government agency, and public and private elementary and secondary schools are FMLA covered employers regardless of the number of employees they employ.

FMLA requires employers to:

- Provide 12 work weeks of FMLA leave each year;
- continue an employee's group health benefits under the same conditions as if the employee had not taken leave; and
- restore the employee to the same or virtually identical position at the end of the leave period.

FMLA may be unpaid or may be used at the same time as employer provided paid leave.

For more information about the FMLA generally, see [Fact Sheet #28](#).

LEAVE FOR MENTAL HEALTH CONDITIONS UNDER THE FMLA

An eligible employee may take FMLA leave for their own serious health condition, or to care for a spouse, child, or parent because of a serious health condition. A serious health condition can include a mental health condition.

Mental and physical health conditions are considered serious health conditions under the FMLA if they require 1) inpatient care **or** 2) continuing treatment by a health care provider.

A serious mental health condition that requires **inpatient care** includes an overnight stay in a hospital or other medical care facility, such as, for example, a treatment center for addiction or eating disorders.

A serious mental health condition that requires **continuing treatment** by a health care provider includes—

- Conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment, either multiple appointments with a health care provider, including a psychiatrist, clinical psychologist, or clinical social worker, or a single appointment and follow-up care (e.g., prescription medication, outpatient rehabilitation counseling, or behavioral therapy); and
- Chronic conditions (e.g., anxiety, depression, or dissociative disorders) that cause occasional periods when an individual is incapacitated and require treatment by a health care provider at least twice a year.

An employer may require an employee to submit a certification from a health care provider to support the employee's need for FMLA leave. The information provided on the certification must be sufficient to support the need for leave, but a diagnosis is not required.

For more information about certification of a serious health condition under the FMLA, see [Fact Sheet #28G](#).

REASONS FOR LEAVE

Leave for the Employee's Mental Health Condition

An eligible employee may take up to 12 workweeks of leave for **their own serious health condition** that makes the employee unable to perform their essential job duties.

Example:

Karen is occasionally unable to work due to severe anxiety. She sees a doctor monthly to manage her symptoms. Karen uses FMLA leave to take time off when she is unable to work unexpectedly due to her condition and when she has a regularly scheduled appointment to see her doctor during her work shift.

Leave to Care for Family Member with a Mental Health Condition

Leave may also be taken to **provide care** for a spouse, child, or parent who is unable to work or perform other regular daily activities because of a serious health condition. Providing care includes providing psychological comfort and reassurance that would be beneficial to a family member with a serious health condition who is receiving inpatient or home care. FMLA leave for the care of a child with a serious health condition is generally limited to providing care for a child under the age of 18.

Example:

Wyatt uses one day of FMLA leave to travel to an inpatient facility and attend an after-care meeting for his fifteen-year-old son who has completed a 60-day inpatient drug rehabilitation treatment program.

Leave to Care for an Adult Child with a Mental Health Condition

A parent may use FMLA leave to care for a child 18 years of age or older who is in need of care because of a serious health condition, if the individual is incapable of self-care because of a mental or physical

disability. For practical purposes, some mental health conditions may satisfy both the definition of “disability” and the definition of “serious health condition,” even though the statutory tests are different.

Under the FMLA, a disability is a mental or physical impairment that substantially limits one or more of the major life activities of an individual. To define these terms and determine if a condition is a disability, the FMLA uses the Equal Employment Opportunity Commission’s (EEOC) regulations under the Americans with Disabilities Act (ADA). According to the EEOC, conditions that “should easily be concluded” to be “substantially limiting” include major depressive disorder, bipolar disorder, post-traumatic stress disorder, obsessive compulsive disorder, and schizophrenia.

Conditions that may only be active periodically are considered disabilities if the condition would substantially limit a major life activity when active. The disability does not have to have occurred or been diagnosed before the age of 18. The disability may start at any age.

Example:

Anastasia uses FMLA leave to care for her daughter, Alex. Alex is 24 years old and was recently released from several days of inpatient treatment for a mental health condition. She is unable to work or go to school and needs help with cooking, cleaning, shopping, and other daily activities as a result of the condition.

For more information about FMLA leave for the care of a child 18 years of age or older with a serious health condition, see [Fact Sheet #28K](#) and [WHD Administrator's Interpretation No. 2013-1](#).

Military Caregiver Leave for Mental Health Conditions

The FMLA also provides eligible employees with up to **26 workweeks** of military caregiver leave in a single 12-month period to care for a covered servicemember and certain veterans with a serious injury or illness. An employee may be an eligible military caregiver if they are the spouse, son, daughter, parent, or next of kin of the servicemember.

For a current servicemember, a serious injury or illness is one that was incurred by the servicemember in the line of duty that may make the servicemember medically unfit to perform the duties of their office, grade, rank, or rating. A serious injury or illness may also result from the aggravation in the line of duty on active duty of a condition that existed before the member began service.

For a veteran, a serious injury or illness is one that made the veteran medically unfit to perform his or her military duties, or an injury or illness that qualifies the veteran for certain benefits from the Department of Veterans Affairs or substantially reduces the veteran’s ability to work. For veterans, it includes injuries or illnesses that were incurred or aggravated during military service but that did not manifest until after the veteran left active duty. An injury or illness may manifest after the individual became a veteran, for example, when the military family member has post-traumatic stress disorder (PTSD), a traumatic brain injury (TBI), or depression that occurs well after an event occurred.

Example:

Gordon’s spouse began to have symptoms of PTSD three years after she was honorably discharged from military service overseas. Gordon uses FMLA leave for two weeks to transport his spouse to and from outpatient treatment at a Veteran’s Administration hospital and to assist her with day-to-day needs while she is incapacitated.

An employer may require that a request for military caregiver leave be supported by a certification. The certification may be completed by a Department of Defense (DOD), Veterans Affairs (VA), or TRICARE health care provider, or by a private health care provider if the provider meets the FMLA definition.

For more information about military caregiver leave under the FMLA, including the definition of a serious injury or illness for a covered servicemember, and certification requirements, see Fact Sheets [#28M\(a\)](#) and [#28M\(b\)](#).

Confidentiality

The FMLA requires employers to keep employee medical records confidential and maintain them in separate files from more routine personnel files. Employers must also maintain an employee's records with confidentiality as required under other laws, such as the Americans with Disabilities Act (ADA) or the Genetic Information Nondiscrimination Act (GINA), where those laws also apply.

However, supervisor and managers may be informed of an employee's need to be away from work, or if an employee needs work duty restrictions or accommodations.

Protection from Retaliation

Employers are prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right. Any violations of the FMLA or the FMLA regulations constitute interfering with, restraining or denying the exercise of rights provided by the FMLA. Examples include refusing to authorize FMLA leave or disclosing or threatening to disclose information about an employee's or an employee's family member's mental health condition in order to discourage them from taking FMLA leave.

For more information about prohibited employer retaliation under the FMLA, see [Fact Sheet #77B](#) and [Field Assistance Bulletin 2022-2](#).

Enforcement

The Wage and Hour Division is responsible for administering and enforcing the FMLA for most employees. If you believe that your rights under the FMLA have been violated, you may file a complaint with the Wage and Hour Division or file a private lawsuit against your employer in court. State employees may be subject to certain limitations regarding direct lawsuits about leave for their own serious health conditions. Most federal and certain congressional employees are also covered by the law but are subject to the jurisdiction of the U.S. Office of Personnel Management or Congress.

Where to Obtain Additional Information



For additional information, scan the QR code or visit FMLA website: dol.gov/agencies/whd/fmla and/or call our toll-free information and helpline, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations, 29 CFR Part 825.

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