WAGE AND HOUR DIVISION
UNITED STATES DEPARTMENT OF LABOR

Fact Sheet # 280: Mental Health Conditions and the FMLA

May 2022

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

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- 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 Opportunit 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.

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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.

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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, visit our Wage and Hour Division Website: http://www.dol.gov/agencies/whd and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

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