



Could this be you? Blanket policies requiring medical certification for intermittent leave may violate the FMLA

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Clients often call with questions about how to properly administer leave to employees without running afoul of the Family and Medical Leave Act (FMLA). Unforeseeable intermittent leave can be particularly difficult to administer. An employer might be tempted to reduce its administrative and tracking burdens by requiring all employees on intermittent leave (whether FMLA-qualified or not) to submit a doctor's note for each intermittent absence. Employers, however, should avoid using these blanket policies or risk violation of the FMLA.

The FMLA permits eligible employees to take a total of 12 work weeks of leave during a 12-month period for a serious health condition. Such leave may be taken intermittently – in sporadic or irregular blocks of time due to a single qualifying condition.

The unforeseeable nature of intermittent leave presents administrative headaches for HR personnel and operational disruptions to employers. It also lends itself to abuse by the employee. Therefore, the FMLA permits an employer to establish a leave policy regarding periodic reporting to the employer of the employee's current status.

Unfortunately, the above policy requiring that an employee submit a doctor's note to support each use of intermittent leave goes too far. The policy, in effect, treats each absence as a separate request for FMLA leave requiring new certification. Under the FMLA, however, once the employee submits proper certification for a qualifying condition, the employer may not request additional information from the employee's health care provider.

That is not to say that an employer can never request a doctor's note to support an employee's absence. For instance, an employer may seek recertification after the certification expires (or six months after start of the certification), where there has been a change in circumstances or when the employer doubts the continuing validity of the original certification. These exceptions must be made on a case-by-case basis, not a blanket policy.

Authors
