**FMLA Intermittent Leave or Reduced Leave Schedule**

**Q.  What are some examples of an employee’s need for intermittent leave?**

An employee can take intermittent leave for a serious health condition of a parent, son, daughter or for his/her own serious health condition which requires treatment by a health care provider periodically, rather than for one continuous period of time.  It may include leave of period from an hour or more to several weeks.

Examples may include but not limited to an occasional basis for medical appointments, or leave taken several days at a time spread over a period of months (ie. Chemotherapy).  A pregnant employee’s prenatal examinations or morning sickness may be taken as intermittent leave.

**Q.  What is an example of an employee’s need for a reduced schedule?**

An employee who is recovering from a serious health condition and is not strong enough to work a full-time schedule but can work and perform the essential functions of the job for part of a shift or workweek.

**Q.  Can an employee take intermittent leave after the birth of a healthy child or placement of a healthy child for adoption or foster care?**

For this purpose, an employee may take leave intermittently or on a reduced schedule *only* if the employer agrees.  While there is no legal requirement, employers should be aware of potential employee relations implications and think this through so as to manage it accordingly. In addition, discrimination concerns may apply if they are inconsistent without appropriate business justification.

**Q.  How can an employer know when an employee is going to be available to work if/when s/he plans appointments that limit or reduce our team where we are not able to meet our business needs?**

If an employee needs leave intermittently or on a reduced leave schedule for *planned medical treatment*, the employee must make a reasonable effort to schedule the treatment so as not to unduly disrupt the employer’s operations.  In these cases, the employer will want to talk with the employee to limit the disruption while not discouraging the employee from using/taking FMLA leave.

**Q.  Can the employer transfer an employee to an alternative position during intermittent leave or reduced schedule leave?**

If the employee needs intermittent leave or reduced schedule leave for a *foreseeable planned medical treatment*, the employer may require the employee to transfer temporarily during the period that the intermittent or reduced leave schedule is required. Such transfer would be to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave (than does the employee’s regular position).

Again, this is for leave that is foreseeable based on planned medical treatment for the eligible FMLA employee or covered family member. DOL regulations have strict requirements about the alternative position, equivalent pay and benefits as well as reinstatement of the employee.

**Q.  If an employer knows an employee is going to be out each month for Migraines, can the employer unilaterally transfer the employee to an alternative position?**

No.  Typically, a migraine or similar medical condition that may occur intermittently requiring a leave of absence is not foreseeable nor is it a planned medical treatment.  Therefore, the employer cannot unilaterally transfer an employee for such a condition that requires intermittent leave.  That said, employers are encouraged to discuss this with their employees to explore mutually agreeable options.

**Q.  To avoid possible misuse/abuse of intermittent leave, can the employer require a doctor’s note for such leaves as a migraine headache, asthma attacks, fibromyalgia, etc.?**

No, an employer may not require a doctor’s note for each absence covered under FMLA.  The medical certification should be completed accurately and completely to provide needed information to include frequency and duration, etc.  Should the circumstances described by the previous certification change significantly, the employer can request a recertification.

**Q.  If a salaried exempt employee uses intermittent leave or reduced schedule leave under FMLA, does the employer still have to pay the exempt employee their full salary for having worked a portion of the day?**

No.  The employer may make deductions from the employee’s salary for any hours taken as intermittent or reduced FMLA leave within a workweek without affecting the exempt status of the employee.

**Note**: Review state laws for state-specific provisions.

Written by a Catapult Advisor