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Sudden Illness at Work Can Trigger FMLA Obligations

January 18, 2023 | [Leah Shepherd](#)



Because employees spend a lot of time at work, it's not uncommon for medical emergencies and flare-ups of chronic conditions to occur at the workplace. Workers may experience events like heart attacks, hernias, fainting, asthma attacks or acute appendicitis.

If an employee suddenly falls ill at work, keep in mind that they may be entitled to immediately take leave under the Family and Medical Leave Act (FMLA), and not allowing that to happen could produce a costly lawsuit.

"The practical thing to do once an employee becomes ill at work is attend to their needs in the most private and confidential way. Depending on how ill they are, you may have to call an ambulance or call a health care provider," said Kristina Griffin, owner of Pinnacle HR Consulting in Clinton, Md. "My reaction would be to get them to a private area so you can talk to them privately."

If the person can speak, you can ask them what they need, such as a medication that's in their desk or purse, or if they want you to call a family member. Griffin recalled a time when she needed to call an ambulance for an employee who went into diabetic shock.

At some point, you may need to find out more information about the person's medical condition, past FMLA requests or employment history. An employee is eligible for FMLA leave if they have worked for a covered company for at least 12 months and at least 1,250 hours during the past 12 months. The FMLA covers serious health conditions, but not brief and minor ailments like a cold or earache.

The employee does not have to specifically reference the FMLA in order to take leave. "If an employee is hospitalized, has surgery and needs time to recover, and you're a covered employer, you want to provide that employee with FMLA paperwork," said Amy Epstein Gluck, an attorney with FisherBroyles in Washington, D.C. "However, the employee has to provide enough information to the employer if the serious health condition is not obvious."

But during a medical emergency isn't the proper time to sort out the FMLA questions. "Figuring out the FMLA connection in my mind comes later," Griffin said. "It's just common sense to let the employee go home or get them help."

Recent Case

In a recent case, an employee's family sued WestRock, an Atlanta-based corrugated packaging company, because he died after he had chest pain at work and his supervisor threatened to fire him if he left work. The employee previously had authorization for FMLA leave because of a heart condition. On Dec. 6, 2022, the U.S. District Court for the Eastern District of Tennessee decided his family's wrongful death and FMLA interference claims could proceed.

"If an employee reports chest pain and wants to go to the hospital, call an ambulance," Epstein Gluck recommended. "People should not have to choose between life-saving health care and keeping their job. I agree with the court in this case. This is FMLA interference. Threatening to discipline an employee for using FMLA leave to which the employee is entitled is interference."

The penalties for illegal FMLA interference can include paying back pay with interest, front pay, liquidated damages, punitive damages and attorney fees.

Defining Interference

[Examples - \(https://www.dol.gov/agencies/whd/fact-sheets/77b-fmla-protections#:~:text=Manipulating%20an%20employee%27s%20work%20hours%2c%E2%80%9Cno%20fault%E2%80%9D%20attendance%2](https://www.dol.gov/agencies/whd/fact-sheets/77b-fmla-protections#:~:text=Manipulating%20an%20employee%27s%20work%20hours%2c%E2%80%9Cno%20fault%E2%80%9D%20attendance%2)
of illegal FMLA inference include:

- Refusing to authorize FMLA leave for an eligible worker.
- Discouraging an employee from using FMLA leave.
- Manipulating a person's work hours to avoid responsibilities under the FMLA.
- Using an employee's request for or use of FMLA leave as a negative factor in hiring, promotions or disciplinary actions.
- Counting FMLA leave under [no-fault attendance policies](#).

To prove FMLA interference, the employee must show that they're covered by the FMLA, that the employer took adverse action that interfered with their ability to take leave and that the adverse action was related to FMLA leave.

To avoid FMLA inference, "regular training on recognizing FMLA requests is important," Epstein Gluck said. "Trainings should include specific examples and reiterate the employer's FMLA policy and procedures. Employers should document everything they do."

If you discipline workers for absences, then do not consider FMLA leave as a factor in those disciplinary decisions. Remember that some workers might need to call in sick at the last minute because of a periodic flare-up of a serious chronic condition.

"The FMLA protects employees who call in to work because of, for example, an autoimmune disease like a lupus flare or endometriosis or Crohn's disease. Supervisors who penalize such an employee for calling in with such serious conditions may be interfering with the employee's FMLA rights," Epstein Gluck explained.

"A serious health condition could be an overnight stay at an inpatient care facility, incapacity for three or more days with ongoing medical treatment, incapacity resulting from chronic or long-term health issues or for conditions requiring multiple treatments," said Alex Henry, a national practice leader at the consulting firm WTW in Altadena, Calif. "So feeling sick or fainting, in and of itself, would not automatically qualify an employee for FMLA leave. His or her eligibility for FMLA would be dependent on the severity and treatment of that condition."