

# The Do's and Don'ts of Intermittent Leave Under the Family and Medical Leave Act

## Labor & Employment Law Update

By Margaret Valenti on October 22, 2024

Intermittent leave can pose logistical issues for employers trying to ensure consistency in business operations. Family and Medical Act Leave Act (FMLA) leave is most often taken as "block leave"—i.e., uninterrupted days, weeks, or months away from work at a time. However, employees may be eligible to use shorter periods of leave (hours, days, or weeks) when the employee has a medical need for leave that is best accommodated through an intermittent or reduced leave schedule.

Intermittent leave allows employees to use leave time on an as-needed or periodic basis, but it reduces the employee's usual weekly or daily work schedule. The following tips can help you navigate the process when you receive a request for intermittent FMLA leave.

### Intermittent FMLA Request Don'ts

#### DON'T DENY A REQUEST FOR INTERMITTENT LEAVE OUTRIGHT.

Entitlement to intermittent FMLA leave is not automatic, but employers should be careful not to outright deny a request for intermittent leave. Employers may require that the medical certification for leave includes the treatment regimen for the medical condition and addresses the medical necessity of intermittent leave. Employers may also temporarily transfer an employee utilizing intermittent FMLA leave to an alternative job with equivalent pay and benefits that accommodates recurring periods of leave better than the employee's regular position. However, any transfer should not adversely affect the employee. Note that employees may use FMLA leave intermittently or on a reduced leave schedule for bonding with a newborn or newly placed child **only** if the employer and employee agree.

#### DON'T LIMIT WHEN AN EMPLOYEE CAN USE INTERMITTENT FMLA LEAVE.

Generally, employers cannot dictate when an employee may use intermittent FMLA leave. As long as the leave is for a qualifying reason, it should be granted. However, employers may require employees to make reasonable effort to

schedule leave for **planned** medical treatment in a manner that does not unduly disrupt the employer's business operations. Employers may also require that the employee use any accrued and available paid leave during FMLA leave.

### DON'T REQUIRE AN EMPLOYEE TO PROVIDE A DOCTOR'S NOTE FOR EACH INTERMITTENT FMLA ABSENCE.

Generally, employers cannot ask for details about the employee's medical condition to determine if an intermittent leave request is legitimate. Employers who suspect an employee is abusing their leave should proceed cautiously to avoid interfering with legitimate use of leave. Requesting a doctor's note for each absence may constitute interference. When an employee requests unpaid time away from work, they must provide enough information for you to determine the leave is for FMLA or specifically state the leave is for an FMLA-related absence.

### DON'T DEDUCT MORE TIME THAN NECESSARY FROM AN EMPLOYEE'S FMLA LEAVE ENTITLEMENT.

Intermittent FMLA leave allows employees to take leave in increments no greater than the shortest period of time that the employer uses to account for use of other forms of leave provided that it is not greater than one hour. The employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken.

#### Intermittent FMLA Request Do's

### DO REQUIRE EMPLOYEES TO FOLLOW REGULAR ATTENDANCE AND ABSENCE REPORTING PROCEDURES.

Employers should communicate to employees using FMLA leave that they are still expected to follow attendance and absence reporting policies. Employers cannot have a policy regarding notification of absences for FMLA that is stricter than the regular policy, although a more generous policy can be provided. Employers should review their employee handbooks to make sure these policies exist and are clear.

Read More: [Can Employees Voluntarily Work During FMLA Leave?](#)

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