

NEWS & INSIGHTS

New DOL guidance sheds light on mental health absences

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The U.S. Department of Labor’s Wage and Hour Division, the agency responsible for enforcing the Family and Medical Leave Act (FMLA), recently issued guidance clarifying employer obligations with respect to mental health leaves of absence under the FMLA. It is important to note that this guidance does not create new obligations for employers, but instead provides an analysis of current requirements including hypothetical fact patterns.

[Fact Sheet #280](#) and its accompanying “[Frequently Asked Questions](#)” furnishes an evaluation as to when an employee may be entitled to job-protected leave under the FMLA for their own mental health condition, or when they are providing care for a family member with a mental health condition.

As FMLA-covered employers are aware, an employee is entitled to job-protected leave for their own “serious health condition” or to care for a spouse, child or parent because of a serious health condition. The FMLA is clear that a “mental health condition” qualifies as a “serious health condition” under the FMLA when a condition incapacitates an individual for more than three consecutive days and requires ongoing medical treatment or it is a chronic condition – such as anxiety, depression or dissociative disorders – that causes occasional periods of incapacity and requires treatment by a health care provider at least twice a year.

Providing all other requirements are met, an employee may use FMLA leave:

- When they are unable to work due to anxiety if they have monthly physician visits.
- To care for an adult child aged 18 or older recently released from several days of inpatient treatment for a mental health condition.
- To attend a family counseling session for the employee’s spouse who is in an inpatient treatment program for substance abuse.
- To assist a parent suffering from mental health issues even though other individuals may also be available to assist in the care.

As a result of the pandemic and other external factors, employee requests for mental health leave are on the rise. Accordingly, employers should be prepared for the increased scrutiny of their responses to these requests.

Attorney [Richard Hackman](#) and the attorneys in the [Saxton & Stump Labor and Employment Group](#) can answer any questions on this new document and the effects it could have on your business.

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