

Questions That Can Help Prevent Intermittent FMLA Abuse

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Most employees requesting leave under the Family Medical Leave Act (FMLA) have a legitimate need for the leave. But some employees may try to use FMLA when their situation does not qualify them for that benefit. Asking certain questions can help you prevent abuse and make sure your employees are receiving the benefits to which they are entitled. Questions can also help you find a solution that gives the employee the time off to which they are entitled but helps minimize the impact of their absence on your organization.

Asking the wrong questions, however, can create problems. For example, employers cannot require the employee to provide information about their medical condition or that of a family member beyond what must be submitted to the FMLA administrator for medical certification.

Different situations call for different questions to help you understand the employee's need for leave and the best way to manage the leave for both the employee and your organization. Here are three situations you or your managers may encounter and suggested questions to help you get the information you need to make the appropriate decisions.

Questions you can't ask



The FMLA certification process requires employees requesting leave to provide certain medical information. This includes contact information for the health care provider; the date when the qualifying condition began and how long it is expected to last; a description of the “medical facts” that support the need for leave; and information that support the employee’s request for intermittent leave, if applicable. That said employees do not have to share all their medical information and asking certain questions can create compliance issues for employers.

Here are some questions employers should not ask:

- What is your medical condition diagnosis?
- Will you send me a copy of your medical records?
- Can your Supervisor call your doctor? (The employee’s direct supervisor should never contact the employee’s health care provider)

1 You notice a “Monday and Friday” pattern in the employee’s leave

Managers can start the conversation by explaining that they have noticed a pattern in the employee’s absences and want to make sure the employee is using the right leave program.

- Is there a reason you are calling out every Friday?
- What is the reason for the repeated absences?
- If you need regularly scheduled leave, would you be willing to change your work schedule and take off a different day that doesn’t impact the company/your team as much? (if available with employer)

The employee’s answers can help you understand their situation and allow you to work with them to find a mutually satisfactory solution. For example, if the employee is sharing parental caregiving duties with other family members or paid healthcare aides, you may be able to accommodate the employee’s caregiving schedule, or ask the employee to trade “shifts” with other caregivers.

You may also discover that the absence has nothing to do with an FMLA qualifying medical condition. Perhaps the employee is having conflict with a co-worker and skips work when his or her shift overlaps with that of the co-worker. Leave is not the answer here, but the employer can involve the HR team to find an appropriate intervention or solution.

2 Employee asks for time off to deal with ongoing treatment for themselves or a qualifying family member

Managers can start the conversation by explaining that they have reviewed the request for leave and would like to work with the employee to find a solution that works for everyone.

- I see you have appointments scheduled during your normal work hours. Does your doctor /treatment center have evening hours?
- Would it be possible to adjust your hours so you can get to your appointments but still be at work during key periods? Perhaps you can schedule for the beginning (or end) of your shift and you can end the day later (or start earlier)

3 Employee requests FMLA

Managers can start the conversation by explaining that they want to make sure the employee is using the leave program that is most appropriate for the situation and understands the requirements of and restrictions for that program.

- I want to be sure you are using the right leave program. Can you tell me why you are requesting to take time off under FMLA?
- Are you planning to see a health care provider for the injury/illness? Note: the manager should not ask about the illness/injury itself; the employee can choose to volunteer that information but does not have to provide information beyond what is required for the leave certification process
- Do you have the forms you need to complete the required medical certification for FMLA?
- Have you ever taken leave for this condition in the past? If so, when?
- To help is manage the workload during your absence, do you know when do you expect to return to work?



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If you would like to meet with one of ESIS' team of leave management experts to discuss how we can partner with you to build an effective, integrated leave management solution for your organization, please contact:

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