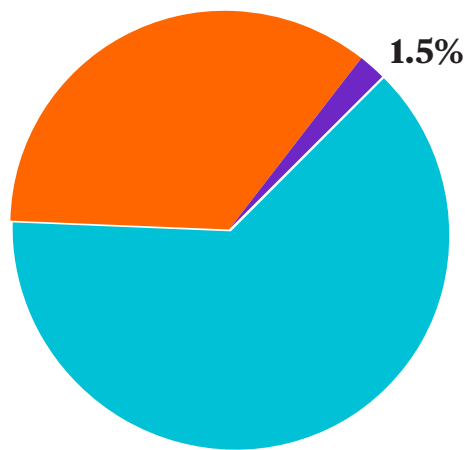


The Six Keys to Managing Intermittent FMLA

How to Overcome the Challenges
of Managing Intermittent FMLA

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More than one third of employees taking leave under the Family Medical Leave Act (FMLA) take intermittent or reduced work leave. Does your company have a solution that allows you to track and manage these leaves effectively to ensure consistency and compliance with the FMLA?



- Employees on continuous FMLA leave
- Employees on intermittent leave
- Employees on a reduced work schedule

The Six Keys to Managing Intermittent FMLA.

One study from the Society for Human Resource Management (SHRM) estimates that the direct cost of paid time off, including wages and salaries, plus the cost of replacement workers or overtime to cover absence, was 15.4% of payroll. Indirect costs, which can include productivity loss, time needed to get new or replacement workers up to speed, and the expenses associated with recruiting replacement workers, add another 6.2%. So the total cost of absence runs between 21% and 22% of payroll. Not administering leave programs consistently or in compliance with the Americans with Disabilities Act (ADA) can generate another layer of costs, which can be significant. Today, a mismanaged case involving ADA noncompliance costs an average of \$500,000.

If not managed properly, employee absence can also create additional indirect costs as well. Stress in the workplace can increase as colleagues work longer hours or must deal with the frustration of replacement or temporary workers who are not familiar with processes. The reduced productivity associated with employee absence can further increase stress if employees face time-sensitive production or project goals. In turn, increased stress can lower employee morale and have health consequences – both of which can lead to increased absenteeism.

In other words, proactively and effectively managing employee absence has never been more important.

The Special Challenge of Managing Intermittent FMLA

When many managers think about an employee taking time off under the Family Medical Leave Act (FMLA), they think of someone taking a block of time – perhaps the whole 12 weeks per 12-month period allowed by law – to care for a newborn or newly adopted child. The reality, however, is quite different. More than one-third of all FMLA leave is taken on an intermittent or reduced schedule basis. Managing intermittent or reduced schedule FMLA continues to be one of the most significant challenges identified by HR professionals. One of the top reasons given is the difficulty in knowing when an employee is taking intermittent FMLA.

Why is tracking intermittent FMLA so difficult? Many organizations don't have the processes and tools in place to understand and track when employees are taking intermittent FMLA. Not being able to track intermittent FMLA accurately increases the likelihood that employees will not be given the appropriate amount of FMLA. If they are given less FMLA leave than the law allows, they may file complaints that can lead to significant fines. On the other hand, when inaccurate tracking leads to excessive or unauthorized leave being taken, it drives up both the direct and indirect costs of absence.

Defining Intermittent FMLA

Intermittent FMLA is simply FMLA leave taken in separate blocks of time rather than a continuous block. All the “regular” FMLA regulations apply:

- The leave must be taken because of the employee’s serious health condition that makes the employee “unable to perform the essential functions of their position,” or the need to care for a family member (spouse, child or parent) with a serious health condition.
- The employee must have worked for the employer for at least 12 months and had at least 1,250 hours of service during the 12-month period preceding the leave.
- The employee must work at a location where the employer has at least 50 employees within 75 miles of that location.

Intermittent FMLA can be taken in increments that can range from weeks to a few days, a few hours or even less than an hour if it is deemed “medically necessary” by a medical provider.

Employees may use intermittent FMLA for things like doctor’s visits and appointments for treatment or therapy for themselves or a qualified family member. This use of intermittent FMLA may require leave of less than an hour.

The variety of ways in which employees can use intermittent leave poses challenges, but that doesn’t mean intermittent FMLA can’t be managed effectively.

The six keys to managing intermittent FMLA are:

- 1** Identifying when an employee is taking intermittent FMLA
- 2** Calculating how much intermittent FMLA non-exempt employees are entitled to
- 3** Accurately tracking intermittent FMLA
- 4** Managing the certification process
- 5** Enforcing a clear reporting process for intermittent FMLA
- 6** Managing abuse of intermittent FMLA

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Identifying When an Employee is Taking Intermittent FMLA

A major challenge identified by HR professionals is simply knowing when an employee is taking intermittent FMLA.



A major challenge identified by HR professionals is simply knowing when an employee is taking intermittent FMLA. Multiple communication channels – including email, voicemail or text to a manager’s cell phone – make it easy for an employee to let his supervisor know he isn’t feeling well and won’t be at work that day. However, nothing in the FMLA regulations say that the employee is required to state that the absence is for intermittent FMLA. And, to be fair, if an employee is in the middle of dealing with a chronic condition – either their own or that of a family member – providing a lot of information about why he or she can’t make it into work may not be top of mind.

The person who receives the notice of an unscheduled or unplanned absence must be able to do three important things:

- Recognize when a request is or might be related to a serious health condition that qualifies for FMLA and;
- Know when and how to request more information to verify this.
- Notify the employee of his or her rights under FMLA and provide necessary information about the leave application process.

If there is a centralized leave request and reporting process in place or an absence management partner/vendor, the process of recognizing and tracking leave is simpler. The team or individual that receives and monitors these reports will know:

- How to recognize FMLA leave;
- When and how to request information needed to verify and track leave;
- How to match a request for time off to a qualified “serious health condition and a specific certified leave; and
- How to keep the employee informed about the status of his or her leave (e.g., time taken versus time granted).

Without a centralized and trained team, however, the person who gets the notice of an unplanned absence is typically the employee’s direct supervisor. Supervisors are often not trained in recognizing and managing FMLA leave. Even if they have received training they may not be certain about how to classify the specific time the employee is taking off (e.g., paid sick time, vacation day or intermittent FMLA). A simple question can provide clarity. For example, asking “Can you tell me if this absence is related to your [fill in the blank condition] and should be tracked as intermittent FMLA?” may be all that is needed. If the employee has not disclosed to the manager the details of the medical condition, or the manager is not comfortable discussing it with the employee, the manager can simply ask a more generic question such as, “Is this absence part of your FMLA leave?”

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Calculating Intermittent FMLA

The FMLA grants eligible employees up to 12 weeks of unpaid leave per a 12-month period based on the employee's standard workweek.

For exempt employees, a standard work week is usually 37.5 or 40 hours, regardless of how many hours the employee actually works.

The calculation of a "standard" work week is less straightforward for non-exempt employees and those whose schedule varies from week to week. Employers

must consider the hours actually worked by the employee requesting leave. The examples below help illustrate the required calculation.

If an employee cannot work scheduled overtime due to his or her serious health condition, then the overtime hours not worked are counted as part of their intermittent FMLA leave.

Calculating Intermittent FMLA

John: 480 hours

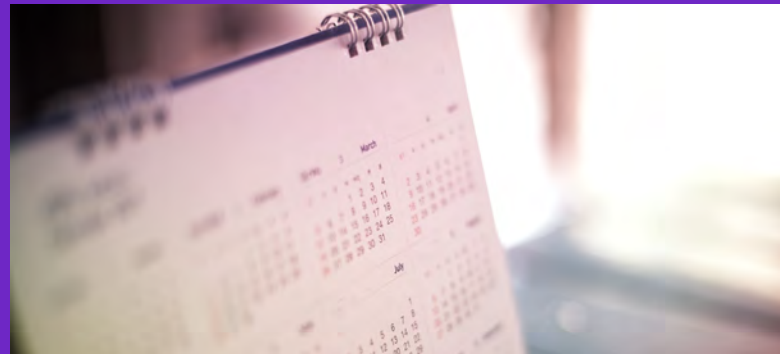
John works 8 hours a day and a 5-day work week for a total of 40 hours a week. Therefore, 12 weeks of leave for John translates into 480 hours during a 12-month period.

Mary: 576 hours

Mary works 12 hours a day and regularly works a 4-day work week for a total of 48 hours. Mary would be entitled to 576 hours of FMLA leave during a 12-month period.

Tom: 544.8 hours

Tom works a varied schedule that typically ranges from 30 to 40 hours a week but can sometimes be as high as 48 hours during busy seasons. To calculate FMLA leave for Tom, the employer can use the average number of hours scheduled over the 12 months prior to the beginning of the leave period. If Tom worked 30 weeks at 8 hour a day, 16 weeks with 10-hour days and 6 weeks with 12-hour days weeks during the 12 months before he requested FMLA leave, he would have worked an average of 45.4 hours a week. Tom would be entitled to 544.8 hours of FMLA leave.



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Accurately Tracking Intermittent FMLA

If you cannot adapt your HR system to track in increments of less than an hour, consider outsourcing FMLA management to a vendor with a robust system that can track in appropriate units not just FMLA and intermittent FMLA but all leaves for which employees may be eligible.

This brings us to the next issue – tracking intermittent FMLA. Some companies still use spreadsheets to manually track FMLA and intermittent FMLA. Tracking minutes at a time is cumbersome and time consuming and places a considerable burden on the HR staff. Many HR systems were set up to track traditional vacation or paid sick time in increments of a half day or full day. As noted above, that won't work for FMLA which can be taken in increments of less than an hour. In addition to calculating leave down to the minute, your system should also be able to track the appropriate amount of time to adjust the employee's salary for unpaid leave taken.

If you cannot adapt your HR system to track in increments of less than an hour, consider outsourcing FMLA management to a vendor with a robust system that can track in appropriate units not just FMLA and intermittent FMLA but all leaves for which employees may be eligible. This includes FMLA, short-term disability (STD), workers compensation, vacation/paid time off, sick days and various other leaves granted by company policies (e.g., bereavement leave, military leave, jury duty leave).



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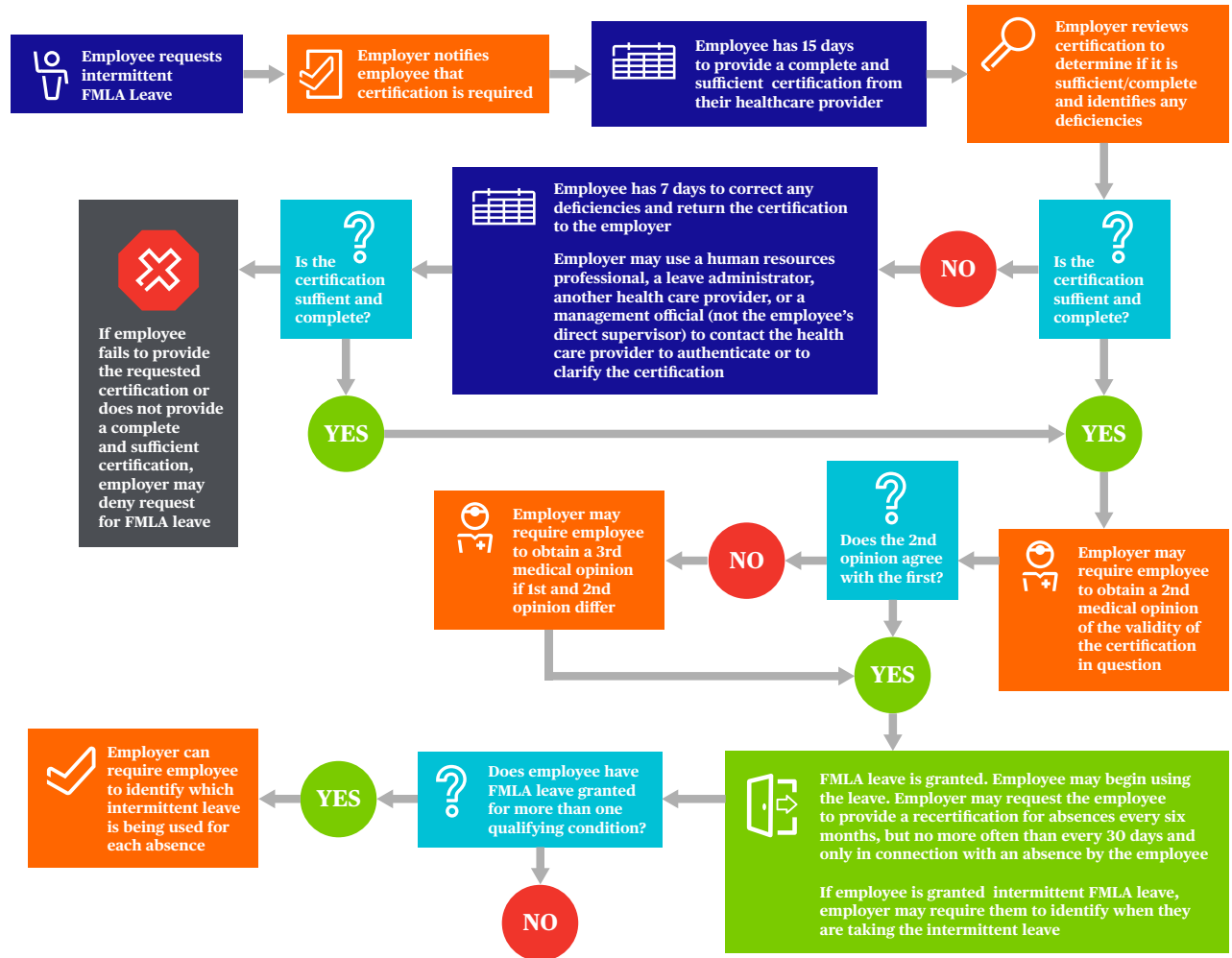
Managing the Certification Process

An important tool available to employers to help them manage FMLA and Intermittent FLMA is the certification process. Employers can require employees requesting FMLA to submit certification from their health care provider. The certification must support the employee's need for FMLA to deal with his or her own serious health condition or that of a family member. In the case of intermittent FMLA, the certification must also support not only the need for leave but also for intermittent FMLA.

An exception does exist – employers may not request certification if the employee is applying for FLMA leave to bond with a newborn or newly adopted child.

The FMLA Certification Process (adapted from The Employee's Guide to the Family and Medical Leave Act, US. DOL)

If the employee fails to provide the requested certification or does not provide a complete and sufficient certification the employer may deny the request for FMLA leave.



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Defining and Enforcing a Clear Reporting Process for Intermittent FMLA

Using a centralized reporting process streamlines both the process itself and improves the validation and tracking of leaves.

Once an employee has been granted intermittent FMLA, the employer may require him or her to work with his or her manager to schedule planned absences (e.g., for doctor's appointments or treatments) to minimize the impact on the employer. For example, the employee could schedule appointments for first thing in the morning rather than the middle of the day or on Mondays or Fridays or on the employee's days off.

The employer should also set up a clear reporting process and insist that employees follow it when requesting planned FMLA leave and reporting

unplanned absences. Using a centralized reporting process, as noted above, streamlines both the process itself and improves the validation and tracking of leaves. A centralized reporting process also helps ensure that all leave is captured and any required clarification is obtained. If you are considering using a vendor/partner to manage FMLA, explore the reporting capabilities offered. Being able to offer multiple channels for reporting – telephone, web portal or email – increases the chance of getting complete and timely information about employee use of intermittent FMLA.



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Managing Abuse of Intermittent FMLA

Many employers don't like to think that their employees might be gaming the system or cheating by taking leave that they don't really need. But it does happen.

Sometimes the employee may be deliberately exaggerating symptoms because they want time off from work. Two of the tools discussed on the previous page can help employers identify and manage this exposure. Recertification can provide verification that the employee's condition continues to warrant the use of FMLA leave. Accurate tracking and reporting that can identify patterns of leave can help employers spot abuse. For example, an employee who always seems to have a health issue after a big football weekend or every Friday during good weather may be abusing the leave. Further investigation may be appropriate.

Sometimes the employee doesn't truly intend to cheat the system. An employee may need several hours two days a week for physical therapy. As time goes on, and the employee progresses towards recovery, she may not need all the time originally allotted for each therapy session or as many sessions each week. But the employee may have gotten used to the scheduled time

away from the job and so may continue to take the full, original schedule of time off.

Asking how the employee is doing or how his or her treatment is progressing can both demonstrate concern for the employee and make him or her feel valued, and can help the manager stay on top of what the employee needs to deal with the underlying condition. This empathetic communication can also support faster return to work.

While managing intermittent FMLA poses a special set of challenges for organizations, clear policies and procedures, consistent enforcement and the right technology can make it much easier. So can outsourcing FMLA management. Over the last five years there has been a steady trend towards outsourcing leave administration, with an average of 40% of employers with 1000 or more employees choosing this option.

When considering leave management partners, be sure to look for one that offers a fully integrated absence management solution that includes:

- Centralized reporting for FMLA, short-term disability (STD), company leave programs, and workers compensation
- Multiple avenues for reporting: phone, email or a web portal
- The ability to customize the program to your organization and culture
- Seamless interface with your HR system for fast verification of leave eligibility and status
- Down-to-the-minute tracking
- A team of legal experts who track new regulations or changes to current regulations to help ensure compliance in an ever-changing environment
- Multiple reporting options to help you discover, analyze and manage patterns and trends in employee absence.



Connect With Us

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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