



# Intermittent FMLA Leave is So Easy to Administer. Yeah, Right!

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# **Intermittent FMLA Leave is So Easy to Administer. Yeah, Right!**

Written by JOHN S. LORD JR. – 5/21/18

*Block* FMLA leave has its own challenges. But *intermittent* FMLA leave can be downright painful – including the fact that intermittent leave claims are the most common type of lawsuit under the FMLA.

When employees need to take scheduled time off for an entire day, week, or even month, an employer has more notice and ability to find ways to make sure the employee's work is still being done. However, when employees get valid certification for intermittent leave, the employer often will have no idea when the need for leave will arise or even how much time in a given day an employee may be out.

The following are some practical guidelines for dealing with these tricky situations:

- Keep track of FMLA usage for all employees, including those on intermittent leave. Tracking such leave is not always easy, but doing so consistently and in an organized way will ensure that employees do not use more time than allowed. You should always require employees who are using intermittent FMLA leave to identify the absence as FMLA-related. Train supervisors

to let HR (or Leave Administration) know of any such absences.

- Insist that certification forms be completed as frequently as permitted by the FMLA.
  - You can request a new medical certification from the employee at the start of each FMLA year and should do so.
  - Once intermittent leave is approved under the FMLA, watch for suspicious absences. If strange patterns develop (such as always being off on Mondays or Fridays), it could suggest a change that allows you to request a recertification.
- Encourage your employees on intermittent leave to schedule their treatments for medical conditions in a way that causes the least disruption to work. If the position is busiest first thing in the morning, and the employee can schedule a dialysis procedure in the mid- or late afternoon, ask the employee to do so. While you cannot deny FMLA-related absences, it is legal to *try* to schedule such absences to avoid business disruptions.
- Consider moving an employee on intermittent leave to another job. Temporary transfers are lawful in intermittent leave circumstances *when the need for leave is foreseeable*. You must still make sure the pay

and benefits are the same, but this option can help with work efficiencies.

- If your company has a standard call-in procedure for time off work, make sure to:
  - Reference the call-in procedure in your written FMLA policy.
  - Consistently enforce the call-in procedure (for all FMLA-related and non-FMLA-related absences). Your policy may require the employee to call a specific number or contact a specific individual about the absence. You can also require that the employee call – and not text – a specific person.

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