

# Ask the Lawyer



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## Must I grant this FMLA request?

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The Family Medical Leave Act (FMLA) is a narrow but important benefit for many workers in the U.S., including federal employees. The challenge for federal managers is to understand some of the intricacies of the law so that they know when and how to challenge a worker who may be misusing FMLA as an unjustified excuse to stay away from the job, while preserving the right to return to work at the employee's option.

Most federal employees do not abuse FMLA. FMLA covers leave for a serious illness of the employee or the employee's spouse, child or parent. It also covers leave for the birth or adoption of a child. It is only available to employees who have been employed for more than one year, and it permits the employee an unpaid absence for up to 12 weeks within a 12-month period. Office of Personnel Management regulations allow a federal worker to substitute paid sick or annual leave.

The two main issues that confront managers in a potential abuse situation are whether an absence is actually due to a serious health condition and the timeliness of an FMLA request. OPM regulations authorize managers to reasonably regulate and question an FMLA absence.

Unlike sick leave, in which employees self-certify the first three days of an absence, a manager may require medical evidence for any FMLA absence, regardless of length, that is based on the employee's serious health condition. A manager may request that the documentation be detailed and that the employee explain the nature of the illness and why it prevents him from performing the essential functions of his job.

An employee who fails to provide the documentation can be denied FMLA benefits and may be carried in an absence without leave (AWOL) status unless the employee can claim some other entitlement, such as sick leave. AWOL, of course, is a basis for disciplinary action against an employee.

An employee who claims an FMLA entitlement because he is caring for a parent, child or spouse with a serious health condition may be required to provide medical documentation that shows both a serious health condition and the necessity of the employee's presence to care for the person who is ill.

An agency may even request administratively acceptable evidence to prove that a child is being born or adopted, although in many cases such an event is obvious.

Another aspect is determining which illnesses fall into the "serious" category. A cold that can be treated with over-the-counter medications or a routine eye doctor's appointment are not examples of serious health conditions even if the employee has a legitimate medical problem. As a general rule, OPM regulations will find a health condition to be serious if the employee is hospitalized, if there are two doctor visits for the same illness or the illness continues for three days and the doctor prescribes treatment. OPM's regulations on this point are complex, and a manager who is thinking about denying FMLA because he thinks a doctor's letter does not describe a serious condition should check with human resources.

Timing of a FMLA request is also important. Generally, FMLA leave should be requested in advance. Thirty days' notice should be given when possible. The absolute end date for requesting FMLA leave is within two days of returning from the absence. This means that managers do not have to grant an FMLA request for the employee who comes up with the idea of making an FMLA request after an absence has occurred and been questioned.

The idea behind FMLA is that employees should be able to take time away from work to take care of major life events and then return to work. It is an important right, but managers have the tools to prevent abuse by those who might claim FMLA benefits without being entitled.

