

U.S. Department of Labor Issues Guidance for Mental Health Conditions Under the FMLA

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In updating its guidance, the U.S. Department of Labor noted that nearly one in five adults lives with a mental illness. Still, only half receive the requisite help, citing the National Institute of Health statistics. May is Mental Health Awareness Month in the U.S., and the Department's guidance seeks to ensure that eligible employees obtain the job-protected leave they need.

An eligible employee may take FMLA leave for their own serious health condition or to care for a spouse, child, or parent because of a serious health condition. A serious health condition can include a mental health condition. Mental and physical health conditions are considered serious health conditions under the FMLA if they require either **inpatient care** or **continuing treatment by a health care provider**.

A serious mental health condition that requires **inpatient care** includes an overnight stay in a hospital or other medical care facility (for example, stays at an addiction treatment center for addiction or eating disorders).

A serious mental health condition that requires **continuing treatment by a health care provider** includes:

Conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment, either multiple appointments with a health care provider, including a psychiatrist, clinical psychologist, or clinical social worker, or a single appointment and follow-up care (e.g., prescription medication, outpatient rehabilitation counseling, or behavioral therapy); and

Chronic conditions (e.g., anxiety, depression, or dissociative disorders) that cause occasional periods when an individual is incapacitated and requires treatment by a health care provider at least twice a year.

When an employee seeks to use FMLA leave to provide care for a serious mental health condition of a spouse, child, or parent, s/he may do so to travel to facilities, attend care meetings, provide psychological comfort and reassurance, and more. The DOL Fact Sheet includes the following illustrations:

Karen is occasionally unable to work due to severe anxiety. She sees a doctor monthly to manage her symptoms. Karen uses FMLA leave to take time off when she is unable to work unexpectedly due to her condition and when she has a regularly scheduled appointment to see her doctor during her work shift.

Wyatt uses one day of FMLA leave to travel to an inpatient facility and attend an after-care meeting for his fifteen-year-old son, who has completed a 60-day inpatient drug rehabilitation treatment program.

Anastasia uses FMLA leave to care for her daughter, Alex. Alex is 24-years old and was recently released from several days of inpatient treatment for a mental health condition. She is unable to work or go to school and needs help with cooking, cleaning, shopping, and other daily activities as a result of the condition.

The DOL also reminds us that while the employer may request the employee submit a healthcare provider certification form that is sufficient to support the need for FMLA leave, a diagnosis is not required.

The resources for each publication can be visited here: [News Release](#), [Fact Sheet](#), and [FAQ](#).

If you have any questions regarding FMLA coverage, employee eligibility, or specific job-protected leave question, please contact [Jill Sebest Welch](#), [Caleb P. Setlock](#), or [any member of the Barley Snyder Employment Practice Group](#).

DISCLAIMER: The information in this alert should not be construed as legal advice to be relied upon nor to create an attorney/client relationship. Please note that the reader's or an industry's specific situation or circumstances will vary and, thus, for example, an approach that is advisable in one industry may not be appropriate in another industry. If you have questions about your situation or about how to apply information contained in this alert to your situation or industry, you should reach out to an attorney.

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