

WALKING THE TALK: FMLA LEAVE FOR MENTAL HEALTH ISSUES

Jun 13, 2022

In the wake of the COVID pandemic and challenging social justice issues, many employers have pledged increasing support and wellness programs for employees dealing with mental health issues. One way employers can make good on these promises (and comply with the law) is by recognizing the application of the Family and Medical Leave Act (FMLA) to situations where leave is needed for a mental health reason.

The FMLA permits eligible employees to utilize available FMLA leave time when needed because of a serious physical *or mental* health condition that renders the employee unable to perform the essential job duties or the employee's covered family member unable to perform regular daily activities, and requires either inpatient care or ongoing treatment by a health care provider. Severe anxiety, major depressive disorder, bipolar disorder, obsessive compulsive disorder, schizophrenia, dissociative disorders, eating disorders, addiction, and post-traumatic stress disorder are all examples of serious mental health conditions that may be covered by the FMLA. Psychiatrists, clinical psychologists, clinical social workers, and mental health therapists may all meet the FMLA definition of health care provider.

The federal Department of Labor recently reminded both employers and employees of the potential application of the FMLA when mental health conditions arise, through a new Fact Sheet and updated FAQs. This guidance discusses the following non-exhaustive examples of situations that may qualify for FMLA leave:

- Leave needed on a continuous basis (such as for in-patient care) or intermittent basis (such as for partial hospitalization or outpatient care) when an employee is unable to work due to a serious mental health condition.
- Leave needed for medical appointments or behavioral therapy appointments to manage medications and symptoms.
- Leave to attend psychotherapy sessions.

- Leave to provide care for a spouse or child (potentially including an adult child) who is unable to work or go to school and needs help with basic medical, hygienic, nutritional or safety needs, or with cooking, cleaning, shopping and other daily activities.
- Leave to participate in a covered family member's treatment program or attend a care conference or after-care meeting with their health care providers.

Recommended Next Steps: Employers should ensure that human resources and benefits personnel, as well as managers, are aware of the potential application of the FMLA when an employee is dealing with their own or a family member's mental health condition. Providing protected FMLA leave to eligible employees dealing with the many challenges created by mental health conditions is one way to demonstrate support for employees' mental health and wellbeing.

For any questions, please reach out to your Bryan Cave Leighton Paisner attorney contact.

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MEET THE TEAM



Christy E. Phanthavong

Chicago

[christy.phanthavong@bclplaw.co](mailto:christy.phanthavong@bclplaw.com)

[m](#)

[+1 312 602 5185](tel:+13126025185)

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