

FMLA FAQs

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FMLA Purpose and Pay

What is the purpose of the FMLA?

The FMLA is designed to help employees balance their work and family responsibilities by providing them with up to 12 workweeks of protected leave to attend to serious medical issues and certain family matters, including leave needed due to certain military deployments of family members. The FMLA also allows employees up to 26 workweeks of protected leave to care for certain military servicemembers who have suffered a serious injury or illness during, or as a result of, military service.

Is FMLA Paid or Unpaid Leave?

FMLA is unpaid leave. However, the law permits – and the Postal Service allows – employees to substitute their paid leave for FMLA leave, so long as the employee complies with all normal leave rules to obtain such paid leave.

Eligibility for FMLA Leave

Who can take FMLA Leave?

Employees who have:

- worked for the Postal Service for a total of 12 months at any time during the past seven years, and who have
- worked at least 1250 hours in the 12 months prior to the start of the leave.

Does the 1250 hours include time such as annual leave or court leave?

No. It includes only hours actually “worked” and does not include non-work time such as annual leave, administrative leave, sick leave, or court leave.

If an employee was out on military leave, does this absence affect eligibility for FMLA?

No. The time employees serve in the military is counted the same as if they had been working. Therefore, their service time counts toward the 12 months and 1250 hours.

Qualifying Reasons for FMLA Leave

What reasons qualify for FMLA protected leave?

Employees can take 12 workweeks of protected leave for the following reasons:

- The birth of a son or daughter and to bond with the newborn child
- The adoption of a child or the placement of a foster child, and time to bond with the newly placed adopted or foster child
- The serious health condition of the employee
- The need to care for the employee’s parent, spouse, son or daughter with a serious health condition
- A qualifying exigency arising out of the deployment of a parent, spouse, son or daughter to active military duty to a foreign country

Employees can also take up to 26 workweeks of protected leave to care for a spouse, parent, son, daughter or next of kin who suffered a serious injury or illness in the line of duty while on active duty and who is (1) a current member of the Armed Forces, National Guard or Reserves or (2) a Veteran who was a member of the Armed Forces, Guard or Reserves 5 years prior to the date the employee takes the leave to care.

Serious Health Conditions:

What is a serious health condition?

It is an illness, injury, impairment, physical or mental condition that involves inpatient care or continuing treatment by a health care provider. Specifically, a SHC includes the following:

- Inpatient Care: a condition involving an overnight stay in a hospital, hospice or residential medical care facility and any incapacity or treatment associated with the inpatient care
- Absence over 3 Days Plus Treatment: a period of incapacity over three full consecutive days plus treatment by a health care provider (HCP) twice within 30 days of the first day of incapacity, or treatment once within 7 days of the first day of incapacity and a regimen of continuing treatment by or under the supervision of the HCP
- Chronic Conditions: any period of incapacity or treatment for a condition that requires at least two treatment visits within a year's time and continues over an extended period of time. (See also link)
- Pregnancy and Prenatal Care: any period of incapacity related to pregnancy and treatment prior to birth
- Permanent or Long-term Conditions: a period of incapacity for permanent or long-term conditions for which treatment may not be effective, such as for Alzheimer's, a severe stroke or the terminal stages of a disease.
- Conditions Requiring Multiple Treatments: any period of absence to receive multiple treatments (including recovery from the treatments) for restorative surgery or for a condition that would likely result in a period of incapacity over 3 days without such treatment.

What does not qualify as a SHC?

Ordinarily, unless complications arise, the common cold, flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems and periodontal disease are not serious health conditions. Also, conditions for which cosmetic treatments are given are not SHCs unless inpatient hospital care is needed or complications develop.

If a medical procedure is voluntary, would FMLA still apply?

Yes, if it meets the criteria of a Serious Health Condition as defined above. The FMLA does not distinguish between voluntary and involuntary treatments.

Refer to ELM 519.521 and 519.522 for leave policy regarding employees who voluntarily donate bone marrow, stem cells, blood platelets and organs.

If an employee is absent due to alcohol or drug abuse, do they get FMLA?

No, not if the absence is due to incapacitation from their substance abuse. FMLA leave is allowed only for *treatment* for substance abuse. Also, absences associated with group meetings such as AA are not considered treatment by a health care provider and do not qualify for FMLA leave.

Chronic Conditions:

What is a Chronic Serious Health Condition under the FMLA?

A chronic SHC is (1) a condition that continues over an extended period of time; (2) may cause episodic, rather than continuing, periods of incapacity; and (3) requires treatment by a health care provider at least twice a year.

Does an employee have to see a doctor while absent for their chronic condition?

No. Incapacity due to a flare up of the chronic condition qualifies for protection and it is not necessary for the employee (or covered family member) to receive treatment from a health care provider during the absence.

How can I be sure an employee is really incapacitated by their chronic condition if I can't get a doctor's note for an absence 3 days or less?

You can ask the employee if the absence was related to their chronic condition and make a note of that conversation. You can also verify in eRMS the frequency and duration of expected absences, or contact HRSSC about the frequency and duration for the case to be sure the absences fall within the range of what was estimated on the employee's certification. If absences continually exceed that estimate, you should ask HRSSC to consider recertification.

An employee frequently comes in late, saying it's her FMLA condition. How can I be sure that's the case?

You should check with HRSSC to see if the certification establishes a medical need to come in late. If not specifically certified, you can deny the leave as FMLA.

When does a FMLA Case end? My employee has used leave for the same condition for several years.

If an employee has a chronic Serious Health Condition, he/she may continue to have the same active FMLA case for more than one leave year. Some conditions can continue indefinitely or last a lifetime. When the employee uses leave for the first time in each new leave year, HRSSC will determine whether the employee is eligible for FMLA in the new year (i.e., meets the 1250 workhour requirement) and notify them accordingly. HRSSC may also ask the employee to submit a new certification either at that time or after reviewing the case at a later date.

Why can I enter leave for some FMLA Cases (such as long-term conditions) even after they end?

When an employee requests leave and specifies their FMLA reason, you should enter leave if the case is available on the "Select FMLA Case" screen during eRMS leave entry even if the "Through Date" has passed. This sets in motion a review and required

notifications for that case by HRSSC. The "Through Date" may change many times over the life of the case. It may change if an employee requests an extension of time to submit certification, or when additional documentation from the employee's Health Care Provider certifies the need for additional incapacity, or when HRSSC reviews the case and determines it will continue into the next leave year. Normally a case should not show a "Date Through" that extends past the end of the current leave year.

Pregnancy and Prenatal Care:

If an employee calls in with morning sickness, is that covered?

Yes. FMLA covers any period of incapacity due to the pregnancy and it's not necessary for the employee to see her doctor.

Is every absence due to pregnancy covered?

No. The employee must be incapacitated due to the pregnancy in order for FMLA to apply. Medical appointments for the pregnant employee are also covered because the FMLA considers any necessary treatment for a condition as incapacity for work.

Is an employee entitled to take FMLA leave to accompany a pregnant spouse to medical appointments?

The spouse must be incapacitated by her pregnancy and in need of care or transportation to the medical appointment in order for FMLA to apply. FMLA leave is not available to accompany an otherwise healthy spouse to a medical appointment. This includes appointments where it would be "nice to be there," such as for an ultrasound, to determine the baby's sex.

Can an employee take leave to care for a daughter who is incapacitated by pregnancy?

Generally, no. In order to take leave to care for a child 18 or older, the child's condition must qualify as a disability under the American with Disabilities Act (ADA) and the disability must make him/her incapable of self-care. Pregnancy in and of itself is not a disability. However, if the daughter is younger than 18, an employee can take FMLA leave to care for her daughter when she is incapacitated by her pregnancy and in need of care.

Does the FMLA apply if an employee says her daughter is having complications from pregnancy and is in need of care?

An employee is entitled to FMLA leave only when the pregnancy and complications due to the pregnancy rise to the level of a disability under the law and the daughter is incapable of self-care due to the pregnancy. The medical certification submitted to HRSSC should contain information to verify this.

Bonding and Placement:

Can employees take bonding leave at any time?

No. Leave to bond with a newborn or newly placed child must take place within 12 months after the birth or placement.

Are both parents entitled to bonding leave?

Yes. Both parents, including same-sex parents, are entitled to take up to 12 workweeks of protected leave so long as it is taken as a block of time. The leave may be taken at the same time, or separately within 12 months of the birth or placement of their child.

Can an employee break up the times they take bonding leave, such as take time in July and then again in December?

When leave is requested in separate blocks of time, it is considered "intermittent leave", and it is not a legal entitlement. Supervisors have discretion to grant or deny such intermittent leave for bonding purposes.

What if the newborn or newly placed child has a serious health condition – do I still have discretion to deny intermittent leave?

No.

Does time off to bond qualify for paid leave?

No. To substitute paid leave for unpaid FMLA leave, an employee must meet normal USPS criteria for paid leave. Therefore, the employee may take Annual Leave or Leave without Pay for bonding with their child. Paid sick leave would be available only if the child is sick; then the employee could use up to 80 hours of sick leave for dependent care.

If an employee needs leave before the adoption takes place, is it FMLA protected?

Yes, so long as the absence is required for the placement to proceed, such as court dates, legal consultations, counseling sessions, travel to another country, etc., the employee is entitled to the leave.

Need to Care for a Family Member

When is an employee entitled to leave to care for a family member?

An employee can take leave to care for the physical needs of a family member, such as when the family member cannot care for their own medical, hygienic or nutritional needs or safety, or cannot transport themselves to the doctor's. Leave is also available to provide psychological comfort but only when the family member is receiving inpatient or home care. Leave on an intermittent or reduced leave schedule must be medically necessary.

Can an employee take leave to care for a family member who is already getting care from others or is in the hospital?

Yes. Employees are entitled to FMLA leave to care for a family member even when the employee is not the only individual available to care for the member.

Qualifying Exigency Leave

What is a qualifying exigency?

FMLA regulations list 8 specific reasons for qualifying exigency leave. These reasons all involve some urgent and/or immediate need to act on family and other matters which are related to a military member's deployment to a foreign country. Leave is allowed for the following:

- (1) to address any issue arising from a short-notice deployment of 7 days or less to attend to military events and programs related to the military member's active duty status (e.g., arrival and departure ceremonies, pre-deployment briefings, etc.)
- (2) to attend to limited childcare and school issues, arrange for alternative childcare, schooling or daycare and provide childcare on an urgent, immediate need basis, all of which must arise due to the military member's call to active duty
- (3) to attend to limited parent care issues, such as arranging for alternative care or providing urgent, immediate need care when the military member's parent is incapable of self-care and the care is necessitated by the member's active duty.
- (4) to make financial and legal arrangements necessitated by the member's call to active duty
- (5) to receive counseling not provided by a health care provided, when needed due to the call to active duty
- (6) to spend time with the member on R & R leave
- (7) to attend official ceremonies, reintegration briefings and other military sponsored post-deployment events, including time for make funeral arrangements

The regulations also allow exigency leave for an employee to address any other issue arising from the call to active duty but *only* if the employer and employee agree that the leave qualifies as an exigency and agree on both the timing and duration of the leave.

Military Caregiver Leave

What is Military Caregiver Leave?

Military Caregiver Leave is protected leave of up to 26 workweeks for an employee to care for a covered servicemember with a serious injury or illness. Covered servicemembers include those in the Regular Armed Forces, certain members of the National Guard and Reserves, and some veterans. Contact HRSSC to discuss specific issues associated with this type of leave.

Amount of Leave & Type of Leave

Do the 12 workweeks of FMLA leave always equal 480 hours of leave?

No. The amount of leave can be more or less depending on the employee's work schedule. For example, FMLA leave entitlement for part-time and flexible schedule employees is pro-rated based upon the weekly average work hours and all leave taken over the 12 months prior to the beginning of the employee's FMLA leave.

Entitlement for employees with regular schedules that are less or greater than 40 hours per week, such as NTFT, will receive entitlements based on their weekly schedule times 12 weeks. If the employee has a regular schedule of more than 40 hours per week, the entitlement will be greater than 480 hours.

Are employees entitled to FMLA protection when they come in late on account of their condition?

Only if provided for in their certification. If you have doubt or questions about whether an employee is entitled to leave for late arrivals, contact HRSSC to ask whether the certification is approved for lateness, as opposed to full day absences.

Can an employee take FMLA leave to work part time?

Yes. Leave can be taken on a reduced leave schedule which allows employees to work less than a full day, charging the hours not worked to FMLA.

If an employee runs out of their FMLA leave but still needs time off, what do I do?

While employees are not entitled to leave, you can grant additional leave at your discretion. For employees who are in need of a large block of time off, consider referral to the DRAC as the employee may have a disability and need leave as a reasonable accommodation.

Can an employee charge their FMLA absences to LWOP?

Yes. FMLA can be charged, at the employee's discretion to SL, AL or LWOP. Postal leave policies are followed for FMLA usage. Therefore, the employee must be incapacitated for use of Sick Leave. If the leave is to take care of a seriously ill dependent, the employee is limited to 80 hours of Sick Leave Dependent Care (SLDC) per leave year and must elect either Annual Leave or LWOP for additional leave required.

When employees are out on workers compensation, and their condition is also a serious health condition under the FMLA, should their absence be charged as FMLA?

Yes. The FMLA specifically provides that time out on workers compensation should also be run concurrently with FMLA when the condition qualifies as a serious health condition. HRSSC has a process in place to approve FMLA for injury-on-duty cases when postal documentation of the injury certifies that it qualifies under the FMLA. Upon verification, HRSSC will notify the employee that all leave for their condition will be charged to FMLA.

Do I have to approve personal leave for EAS employees for their FMLA condition?

No, not always. Personal leave is at management's discretion. While employees on FMLA can be allowed personal leave time for their condition, it should only be granted to the same extent as it is to other employees for non-FMLA reasons. If an employee's FMLA condition results in frequent absences which exceed the personal leave given to others, personal leave can be denied and the employee can be required to take the leave as FMLA SL, AL or LWOP.

Can I deny the personal leave even after I've previously approved it on numerous occasions?

Yes. Managers may disapprove personal leave requests when necessary to carry out their responsibilities to control work hours. Refer to ELM 519.7

When an employee does not work overtime due to his or her FMLA condition, can I deduct the overtime not worked from the FMLA entitlement?

No, because the Postal Service does not count overtime worked in calculating an individual employee's entitlement, we cannot deduct overtime from that entitlement.

Supervisory Responsibilities: Notification Requirements and Recognizing Potential FMLA Leave

Do I have any notice requirements that I must meet?

Yes. You have two responsibilities:

- Be sure that the Department of Labor Poster 1420, "Employee Rights and Responsibilities under the Family and Medical Leave Act" is posted in your facility, in a place where employees and applicants can see it.
- Be able to recognize when an employee's request for leave could reasonably be for an FMLA qualifying reason and record the leave as FMLA in eRMS. If you do not use eRMS, contact HRSSC to provide them with the information you have so that HRSSC can send out the required notice and certification forms.

How do I recognize when an absence could be entitled to FMLA protection?

Use the list of conditions which qualify for FMLA protection as your guidepost. For example, if you learn about that an employee will be in the hospital for surgery, is absent due to morning sickness, or is absent over 3 days, you have enough information to know that the leave is, or could be, FMLA qualifying.

Why is it up to me to recognize when an absence may be FMLA protected; isn't it the employee's responsibility to tell me?

The FMLA states that it is the employer's responsibility to recognize when an absence may qualify for FMLA protection and it is not, in the first instance, the employee's responsibility. In fact, employees giving notice of the need for FMLA leave do not need to expressly assert rights under the FMLA or even mention the law, although they do need to state a qualifying reason for the needed leave. This only changes when employees request leave for an already approved or pending FMLA qualifying reason. In that case the employee must specifically state the leave is for the FMLA reason.

Is leave for an on-the-job illness or injury also FMLA?

If the illness or injury fits one of the definitions of a Serious Health Condition, the leave is both FMLA and IOD or IOD/COP. DOL regulations specifically state that when a workers' compensation condition also qualifies as a serious health condition, both the workers' comp absence and FMLA leave run together.

It is necessary for Supervisors to input the leave in eRMS as FMLA so that a designation notification is sent to the employee. If leave is not input appropriately, the employee may receive more FMLA than he/she is entitled.

What if the employee tells me they don't want FMLA?

Whether they want it or not, it is your responsibility to record the leave as FMLA to ensure they receive the required eligibility and rights/responsibilities notices from HRSSC. Tell the employee that it is your responsibility to record the leave as FMLA when you have reason to believe it is.

What if I know or reasonably believe that an employee is out for an FMLA qualifying reason but the FMLA leave is denied?

Contact HRSSC, provide the information you have and ask that the FMLA be run if appropriate.

What happens after I enter leave as FMLA, or notify HRSSC that one of my employees needs FMLA protection?

Within five business days of (1) entering leave into eRMS as FMLA, or (2) notifying HRSSC by email, or (3) following the employee's call to IVR requesting FMLA protection for a new serious health condition, a packet of FMLA information and forms will be mailed to the employee's address of record.

Why is my employee's case in "Pending" status for so long?

The employee will have at least 15 calendar days (from receipt of their packet) to return complete and sufficient certification to HRSSC. However, several situations could further delay the FMLA determination:

1. The employee may request an extension of the time to return their certification. Reasonable requests are honored.
2. The employee may be asked to submit additional information (Cure) before HRSSC can make a decision. They will be given a minimum of 7 days to return this information.
 - a. The employee may also request an extension of the time to return their Cured response. Reasonable requests are honored.
3. Under certain circumstances, employees may be asked to provide a signed PS Form 2488 to allow Postal Occupational Health to clarify certain medical information on their certification. The employee will be given 7 days to return the signed Form, and the case will remain in "pending" status until the Postal Physician contacts the employee's Health Care Provider.
4. HRSSC has at least five business days to make a decision to approve or deny the FMLA Case following receipt of complete and sufficient certification.

Controlling Leave: Employee Notice Requirements

Do employees have to tell me that they're taking FMLA Leave?

When leave is being taken for an *approved* or pending approval FMLA case, employees need to tell you the absence is for their FMLA case. In that way, you will know to record that as protected leave in eRMS.

If an employee has more than one approved FMLA case, do they have to tell me which case they're taking the leave for?

Yes. While you are not entitled to know the medical condition entitling the employee to leave, you should know whether the leave is for the employee's own condition, to care for a family member, or another qualifying reason. And if the employee has more than one approved FMLA case, the employee must identify their request by case number or provide you with sufficient information to know which case the absence is for, so you can properly record the absence in eRMS. This will help you manage FMLA leave should you later suspect abuse.

How much notice do employees have to give before taking FMLA leave?

Notice requirements depend on whether the leave is foreseeable or not. For foreseeable leave, such as for birth, adoption or planned medical treatment, employees must give at least 30 days notice. When 30 days isn't possible, the notice should be the same day they learn of the need for leave or the next business day.

When leave is unforeseeable, notice is required as soon as they learn of the need for leave and at least before the start of one's tour.

Do I have any say in when employees get to take FMLA leave?

For the most part, no. There is one important exception, however, and that is when employees take leave for planned medical treatment, such as a surgery or weekly therapy sessions.

What can I do to control when employees take leave for medical appointments or planned procedures?

The FMLA requires employees to consult with their supervisor and make a "reasonable effort" to schedule leave for planned medical treatment "so as not to disrupt unduly the employer's operations." Employees should consult with you prior to scheduling their treatment and if they don't, you can initiate discussions with them and require them to attempt to make arrangements for a schedule that doesn't unduly disrupt operations. If they refuse to cooperate and consult with their provider to arrange a suitable treatment schedule, FMLA leave can be denied.

Do employees have to follow normal call-in procedures for FMLA?

Yes. The FMLA requires employees to comply with their employer's usual and customary notice and procedural requirements for requesting leave. When employees do not comply with these requirements – and no unusual circumstances justify their failure to comply – FMLA protection for the absence can be denied.

Can I mark employees AWOL when they don't call in their FMLA absence on time?

Yes. If employees call in 2 hours after the start of their tour, they can be marked AWOL for those two hours; FMLA protection would be appropriate for the remaining 6 hours.

Can I discipline an employee for failure to follow postal call-in procedures even when the absence is FMLA protected?

Yes. Employees on FMLA leave are required to comply with all normal and customary USPS policies and procedures for requesting and taking leave.

Controlling Leave: Employee Documentation Requirements

Can I require employees taking FMLA leave to comply with normal USPS rules on sick leave documentation?

Yes. If employees fail to provide documentation as appropriate, the leave will be FMLA/LWOP.

Can I use the "deems desirable" provision to request documentation for FMLA absences 3 days or less?

Yes, so long as you have a fact-based reasonable belief the employee is not taking a particular absence for the reason stated.

What are examples of when it's appropriate to make a "deems desirable" request?

One example is when an employee asks for AL on Friday, was denied, but then calls in FMLA/SL on that day. Another is when you have two employees in a relationship (married or you know they're dating) and they continually call in for FMLA on each other's non-scheduled days.

Can I require a doctor's note, or confirmation of appointment, when an employee requests leave for a scheduled appointment, or states they went to their doctor during an absence?

While you cannot require a doctor's note that provides any medical information, you can ask the employee to give you a note from the doctor's office to confirm that he/she was there on that day for an appointment.

Can I place someone on restricted sick leave due to their FMLA absences?

No.

Can I require a doctor's note to verify that each instance of intermittent absence is due to the FMLA condition?

Generally, no. Otherwise you could be charged with interfering with or discouraging the employee's right to take FMLA leave. FMLA regulations limit how often medical documentation can be requested and the type of documentation that can be requested. Doctor's notes, other than certification and recertification, are not permitted. However, if you have a specific fact-based reason to believe an absence is not being taken for the stated reason, deems desirable may apply and you can require sick leave documentation for absences 3 days or less (but only so long as the employee is requesting sick leave). See ELM 513.361

If an employee is taking LWOP so that I can't use the "deems desirable" option, what can I do if I think the absence is not being taken for the stated FMLA reason?

There are 3 things you can do.

- (1) Recertification: You can ask HRSSC to request recertification when you have a reasonable belief that the leave is not being taken for the reason stated. For example, if you assigned an employee a task which he/she objects to and then the employee suddenly leaves work saying their FMLA condition just flared-up. You could ask for recertification for that particular absence if you have a good faith belief that the employee did not take leave for the stated reason.
- (2) Personal Statement: You can ask an employee for a personal statement to verify that the particular absence was related to their FMLA condition and make a note of that conversation.
- (3) Attendance Note: You could also institute a practice of asking all your employees to provide you with a note from their medical provider's office that they were there for a scheduled medical appointment.

What can be done about employees who regularly call in on FMLA in conjunction with their non-scheduled days and holidays?

You can ask HRSSC to request recertification. Provide HRSSC with the information you have regarding the pattern of absences. HRSSC can then provide this information to the employee's doctor and ask whether this pattern is consistent with the employee's need for leave. If an employee is using SL for these days, you can also use the "deems desirable" option for that particular absence.

What can I do about an employee who consistently exceeds the estimated frequency and duration of approved FMLA absences?

Provide the absence information to HRSSC and ask that they seek recertification from the employee's health care provider. Recertification is also allowed when the frequency or duration of absences has changed significantly, or the nature or severity of the illness has changed significantly. If the provider then states that the employee is taking too much leave which is not medically necessary, FMLA protection for absences that continue to exceed the F & D can be denied. Consult with the Area Law Department before taking this step.

Contact with Employees While Out On FMLA Leave

When I have employees out on FMLA leave, can I contact them if I want to know when they're coming back to work?

Yes. The FMLA allows employers to require employees to report periodically on their status and intent to return to work. So long as supervisors exercise this right in a non-discriminatory or retaliatory way, it is permissible.

If an employee is out on FMLA leave, can I contact him or her if I have a work-related question?

Yes. Employers may contact employees when necessary to ask work-related questions.

Discipline Issues

If an employee is out on FMLA leave, can I still initiate discipline that is unrelated to the leave?

Yes. Discipline can proceed so long as it is not due to the FMLA absences themselves.

What should I do if I've initiated discipline against an employee for excessive absenteeism and then I learn that HRSSC subsequently approved FMLA protection for those same absences? The employee did not request FMLA for the absences, and did not check "FMLA" on the PS 3971 for those dates. Is the discipline now void?

The discipline is not necessarily void. You should contact HRSSC to inform them of the pending disciplinary proceedings and the facts surrounding the employee's leave. HRSSC may rescind the FMLA designation due to the employee's failure to comply with the timely notice requirements.

Employees do not need to expressly assert rights under the FMLA or even mention the law to meet these notice requirements. However, in the absence of certain extenuating circumstances, employees must give you timely notice of their need for leave and reasonably adequate notice that their absence is for an FMLA qualifying reason. So, if the employee did not provide you with sufficient information to suggest that the absences could be FMLA qualifying at the time of the request, or did not timely notify you of their need for leave, then this may result in the absences not being FMLA protected and cited in discipline. However, these instances must be handled on a case-by-case basis.

Can I deny a request for FMLA leave protection even though the employee has an Approved FMLA case for the time of the absence?

Generally, no, but there are some important exceptions.

- One exception is when the employee's medical provider has confirmed the expected F & D through recertification or clarification, but the employee consistently exceeds that.
- A second situation would be when an employee comes in late claiming FMLA, but eRMS confirms only approval for full day absences.
- A third example is when an employee is approved for scheduled medical treatment, but does not comply with your instructions to confer with you to schedule those treatments in advance at a time that is mutually agreeable.

If I have initiated disciplinary proceedings against an employee due to poor performance and the employee goes out on FMLA due to the stress of that proceeding, can I still go ahead with the discipline?

Yes. Disciplinary proceedings can continue even during a period of FMLA leave so long as the taking of the leave is not the reason for the discipline.

As part of a disciplinary settlement, the employee has signed a last chance agreement. If the employee has an FMLA absence, can it be counted against the employee as a violation of that agreement?

No. FMLA absences are protected and cannot be considered for disciplinary purposes.

Employee Benefits

Can I consider FMLA absences when making merit-based payments or awards?

Yes, so long as it is done on a non-discriminatory basis. Pay for Performance ratings are based on achievement of established performance objectives; if a long term absence results in the objective not being met, the merit evaluation can be pro rated accordingly. This is true whether the absence is FMLA or not.

Is the FMLA user entitled to an award for perfect attendance?

No, so long as the award is otherwise denied to employees on an equivalent non-FMLA status.

Return to Work

Can I ask for return to work documentation for employees on FMLA leave?

Yes. The Postal Service's regulations governing the return to work of bargaining unit employees are not affected by the FMLA. The return-to-work provisions in ELM 865 apply. However, for non-bargaining unit employees, the FMLA regulations *do* apply and therefore, supervisors can only require a statement from their health care provider that they are able to return to work. And, in cases where non-bargaining unit employees return after intermittent or reduced leave, return to work clearance can only be sought where reasonable safety concerns exist.

What are the "reasonable safety concerns" which would allow a supervisor to require return to work clearance after a non-bargaining unit employee's intermittent or reduced schedule leave?

Reasonable safety concerns mean that you have a reasonable belief that the employee could pose a significant risk of substantial harm to him/herself or others. In determining whether such safety concerns exist, you must consider the nature and severity of the potential harm and the likelihood that the potential harm will occur.

The doctor's return to work note indicates that the employee still has restrictions. Is the employee still entitled to return?

The employee is entitled to return only if the restrictions do not affect his/her ability to perform all the essential functions their job. If the restrictions affect only marginal functions and not essential functions, you must return the employee.

Confidentiality

Why can't I find out about the reason for my employee's FMLA absence?

The FMLA imposes strict confidentiality requirements on employers regarding an employee's medical information. HRSSC Specialists have an obligation not to disclose such confidential medical information. Likewise, if you become aware of an employee's medical information you must also maintain the confidentiality of that information.

What information am I entitled to know about my employee's FMLA leave?

Supervisors and managers can be informed about restrictions on the work or duties of an employee and necessary accommodations. You can also be told about the estimated frequency and duration of an employee's absence, and this will appear in eRMS. (If you do not have eRMS, contact HRSSC for this information.) Last, you are entitled to know which condition an employee is absent for, such as whether it's one of the employee's own condition(s), to care for a family member, or for a qualifying exigency.

DOL Investigations

What do I do when a DOL investigator asks for information or wants to meet with me?

- First, obtain the investigator's contact information and verify his/her credentials.
- Second, call your District HR Manager for assistance and send a confirming email with a copy to the HR Manager. The HR Manager will contact the Area Law Department and an attorney will be assigned to assist you.
- Third, after discussion with the HR Manager, make an appointment with the investigator to discuss the matter. Be sure that the Law Department attorney is available, either in person or telephonically, to participate in the investigatory interview.