

Best Practices for Administering Intermittent Leaves in the Workplace

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The Intermittent Leave Problem

The Family and Medical Leave Act (FMLA) protects employees who need to take time off work for family or medical-related absences, either for themselves or family members. FMLA time can be taken in various allotments. One such allotment is intermittent leave, which allows an employee to take leave from work in separate blocks of time for a single qualifying family or medical issue.

A recent study from Mercer found that managing intermittent leave has become a prevalent concern in the workplace.¹ Consider:

33% of employers have reported an increase in intermittent leave

45% of employers have reported difficulty managing or tracking intermittent leave

Uncertainty regarding how to manage intermittent leaves can create big headaches, and potential compliance nightmares, for a human resources (HR) manager. For many, managing intermittent leave requests is unfamiliar territory. Employers may not know whether they are being too strict or too lenient when enforcing intermittent leave requests, or they aren't sure whether an employee's request fits within FMLA regulations.

Proper management of intermittent leaves is essential, as it can reduce lost employee productivity and can help employers avoid the risk of fines, audits or legal action that can result from improperly managed leaves.

However, there can be a balance between helping your employees take time off of work to manage their health and family matters and doing so in a way that fulfills legal obligations and works as part of sensible personnel management.

The solution is to arm yourself with knowledge about proper intermittent leave management, determine a policy that works for your company and ensure your managers and employees are following those procedures. In addition, you can help mitigate the reason for the absence by taking a holistic approach to employee health concerns that can cause disability leaves. Employee accommodation assistance through your disability carrier can help reduce employee time off by addressing the circumstances that can lead to medical leaves.

To help ensure you're properly accommodating employees while complying with FMLA regulations, we offer up some **best practices for managing intermittent leave and discuss how offering and implementing employee accommodations may reduce instances of intermittent leave in your workplace.**

¹ Mercer Survey on Absence and Disability Management, 2013 Survey Report.

An FMLA Refresher

Before we dive into best practices, let's get grounded in some key terms and concepts you'll read throughout this white paper.



What is intermittent leave?

FMLA provides employees with unpaid, job-protected leave. This leave may generally be taken in three ways:

Continuous leave — Leave that is taken in a continuous block of time (e.g., Aug. 1-31)

Intermittent leave — Leave that is taken in separate blocks of time for a single, qualifying medical or family reason (e.g., Aug. 4-6, Aug. 8, Aug. 12-14)

Reduced leave schedule — A leave schedule that reduces the usual number of hours per workweek or hours per workday of an employee (e.g., working 1 p.m. to 5 p.m. instead of the employee's usual 9 a.m. to 5 p.m. schedule or working full days on Tuesdays and Thursdays instead of a set Monday through Friday schedule)

Do I have to grant FMLA leaves for my employees?

Only employers with 50 or more employees who are employed for 20 or more calendar workweeks during the preceding calendar year must provide FMLA protection to their employees (public agencies and private and public elementary and secondary schools are covered regardless of their number of employees).

In addition, not every employee is eligible for FMLA leave. To be eligible, employees must be employed for at least 12 months by a covered employer, have worked at least 1,250 hours during the previous 12-month period before a leave takes place, and work at a location where at least 50 employees are employed by the employer within 75 miles of the employee's worksite.

What can intermittent leave be taken for?

There are a number of reasons an employee would qualify for intermittent leave, including:

- To recover from his or her own serious health condition
- To care for a family member with a serious health condition
- To care for covered service member with a serious injury or illness
- A qualifying exigency arising out of a family member's military deployment

Employers are not required to permit employees to take intermittent leave for the birth of a child, or placement of a child for adoption or foster care, but may agree to allow employees to do so.

What are an employee's responsibilities when submitting a request for intermittent leave?

First, an employee must make a reasonable effort to schedule planned medical treatment so that it does not "unduly disrupt" operations. This may include scheduling medical appointments or treatments during less busy parts of the workday or workweek, or scheduling appointments outside of work hours whenever possible.

Second, an employee needs to provide an intermittent leave request via a certification within 15 days of an employer's request. This documentation is provided by the employee's health care provider to support the employee's need for an absence. It will outline parameters such as the times leave might need to be taken and how many days a month this absence could occur.

Although the law does not require the use of a specific certification form, the U.S. Department of Labor has developed forms for employers to use, if they prefer. The forms are available for free at www.dol.gov/whd/fmla.

Best Practices for Managing Intermittent Leave



It's important to have an understanding of the regulations around intermittent leaves to ensure your company's leave policy is compliant and that you have proper processes and procedures in place to effectively manage these leaves. The following best practices can help you do just that. These tips are just a starting point. Resources such as your company's legal advisor or your disability carrier can assist with your questions and help implement a process that fits your organization.



Management Tip 1

Follow FMLA's Employee Notice Requirements

The first step to develop an intermittent leave process for your workforce is to understand the basic intermittent leave notice requirements.

For **foreseeable leaves** (e.g., a scheduled surgery, medical treatments) employees must provide 30 days' notice, or provide notice as soon as practical under the circumstances. For **unforeseen leaves** (e.g., an emergency surgery, medical treatment due to an accident or severe illness), employees must provide documentation as soon as is practical.

Best Practices for Managing Intermittent Leave



Management Tip 2

Enforce Employer Call-in Procedures

Employers have the right to enforce their regular call-in procedures when an employee is claiming an absence under intermittent leave. Specific information about when to call, who to call and what information employees must provide when reporting a leave of absence are all permitted and provide employers with good information to better manage employee leaves.

When employees call in to report a leave, make sure you obtain sufficient information to determine whether the leave qualifies for FMLA leave. To obtain that information, consider asking the following questions:

- What are the specific reasons for your absence?
- What job duties are you unable to perform?
- Are you going to see a physician?
- Have you previously taken a leave for this condition?
- When did you first learn that you'll need to be off work?
- When do you expect to return to work?

FMLA Myths: Blue-collar Industries Are Most At-risk

Many believe that blue-collar professions are the highest users of intermittent leave and experience higher costs associated with lost productivity. However, a recent survey of more than 300,000 employees shows that it's actually white-collar industries that are the most at-risk for lost productivity caused by workplace absenteeism.²

Occupation	Annual cost of lost productivity due to absenteeism (in billions)
Professionals	\$24.2
Managers/executives	\$15.7
Service workers	\$8.5
Clerical/office	\$8.1
Sales	\$6.8
Schoolteachers (K-12)	\$5.6
Nurses	\$3.6
Transportation	\$3.5
Manufacturing/production	\$2.8
Business owners	\$2.0
Installation/repair	\$1.5
Construction/mining	\$1.3

² Healthways Inc. Gallup-Healthways Well-Being Index, 2012. Survey of 303,625 employees.

Best Practices for Managing Intermittent Leave



Management Tip 3

Track Use Carefully

It's essential to track employee usage of intermittent leave. Proper tracking enables employers to provide just the right amount of FMLA leave their employees are entitled to, and it also can help employers detect patterns or trends that may suggest instances of misuse. For example, there might be certain days of the week, particular assignments, some departments or certain managers for which employees consistently take leave.

Proper FMLA leave tracking doesn't just focus on tracking when an employee is on leave. It's also important to track how time away from work is logged. FMLA regulations specify that an employer must account for intermittent leave using increments that aren't greater than the shortest amount of time used for other forms of leave (provided that period is no greater than one hour).

In other words, if you track employee sick leave in half-hour increments and vacation time in one-hour increments, you must track FMLA leave in half-hour increments (the shortest amount of time).



Intermittent Absence in the Courts:

Tillman v. Ohio Bell Telephone Company

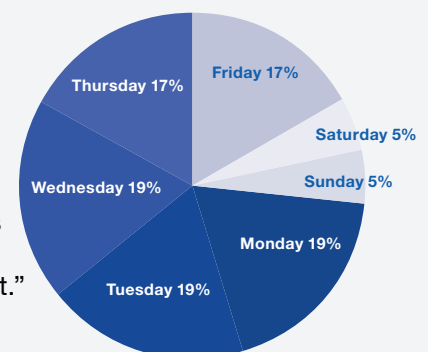
An employee was granted intermittent leave for a chronic back condition. However, the employee's usage of leave created suspicion as it routinely occurred on Fridays, weekends and around holidays. After conducting an investigation, including the use of surveillance and an interview with the employee, the employee was terminated for fraudulent use of intermittent FMLA leave.

The court upheld the employee's termination, essentially finding that, despite the employee's medical certification documenting his chronic, serious health condition requiring occasional intermittent FMLA leave, the employee had not provided sufficient evidence to support he was entitled to FMLA on the day in question, especially given the evidence to the contrary. Requiring the employer to accept the employee's request for leave based solely on a valid certification, and in contrast to the evidence to the contrary, would essentially give the employee "a license to take unnecessary medical leave."

The employer's thorough tracking of the employee's FMLA leave usage helped identify the misuse, triggering the investigation that resulted in the employer winning this case.

FMLA Myths: The Friday/ Monday Leave Act

A joke in the industry is that FMLA really stands for the "Friday/Monday Leave Act." But a 2013 study completed by the Integrated Benefits Institute demonstrates intermittent leave isn't being used to extend employees' weekends.³ It's actually used fairly equally throughout the workweek.



³ Integrated Benefits Institute. Using FMLA to Understand and Manage Disability Absence. Published February 2013.

Best Practices for Managing Intermittent Leave



Management Tip 4

Require Completed Medical Certifications

FMLA regulations require employees to provide completed medical certifications within 15 days of an employer's request for certification, unless special circumstances apply. But that doesn't mean an employee's certification must be accepted at face value.

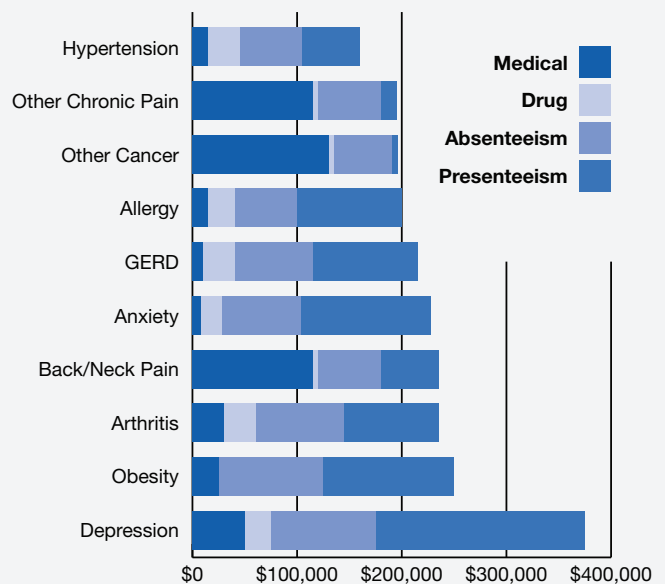
Upon receiving an employee's certification, ensure it is complete and provides sufficient information to understand the employee's leave requirements. If it is not complete, responses are vague or unresponsive, or there are questions as to whether the form was completed by the health care provider, request the employee obtain the missing information, clarify the unclear responses and/or authenticate the certification. If the employee fails to provide missing information, the certification is incomplete and leave may be denied.

If the employee fails to clarify or authenticate the certification, the employer may use a health care provider, an HR professional, a leave administrator or a management official (but not the employee's direct supervisor) to reach out to the employee's medical provider only in the following circumstances:

- **To authenticate.** An employer can send the employee's health care provider a copy of the certification for verification that the form was properly completed and/or authorized by the employee's provider. Aside from that, no other information can be requested on the employee's medical condition.
- **To clarify.** We've all seen doctors' handwritten notes or instructions that are barely legible. To ensure proper context, employers can contact the provider to make sure they understand all of the employee's certification. This could mean reaching out to a doctor to verify his or her handwriting or double-check that the employer has the correct understanding of the absence parameters and any duties the employee is unable to perform. No additional information can be requested outside of the clarifying questions.

FMLA Myths: Absence Adds Up

It's commonly believed that medical and pharmaceutical costs make up the majority of an employer's health-related lost productivity costs. However, an influential study of 144,000 employees found that employee absenteeism and presenteeism (the productivity loss that occurs from people at work with medical issues) are actually the biggest contributors to an employer's lost productivity costs.⁴



9 Companies, 144,402 Employees, 6 Industries

- Manufacturing
- Hospitality
- Consulting
- Telecommunications
- Energy
- Insurance

⁴ Loeppke R, Taitel M, Haufle V, et al. Health and Productivity as a Business Strategy: A Multiemployer Study. *J Occup Environ Med.* 2009;51(4):411-428. doi:10.1097/jom.0b013e3181a39180.

Best Practices for Managing Intermittent Leave



Management Tip 5

Ask for Recertifications

Employers generally can request recertification — which can determine whether FMLA leave should be extended or if a significant change in an employee's leave usage is the result of a supported change in a medical condition.

An employee's recertification cannot be requested more often than every 30 days. If the initial medical certification indicates that the duration of the condition will last longer than 30 days, an employer must wait until that duration expires before requesting a recertification. However, employers are allowed to request a recertification every six months, regardless of the stated duration. An employer also can request a recertification in less than 30 days if one of the following applies:

- The employee requests an extension of his or her original request.
- The employee's circumstances have changed significantly from the original certification. For example, if an employee was missing one or two days per month, then started missing 10 days a month.
- The employer receives information that “casts doubt” on the reason for the leave.

Intermittent Absence in the Courts:

Graham v. BlueCross BlueShield of Tennessee, Inc.

An employee requested intermittent leave because of her migraine headaches. She subsequently missed 28 consecutive days at work, which significantly exceeded the frequency and duration listed on her certification.

Her employer requested a recertification, which she never provided. Her FMLA leave was denied and the employee was terminated. The employee brought an FMLA interference claim against her employer, essentially claiming the employer wasn't entitled to recertification because her prior certification did not specify the period leave would be required for her condition. The court upheld the employer's action, indicating that the “plaintiff's certification did not entitle her to unfettered FMLA leave.”

The employer followed proper procedure by asking for a recertification because the employee's usage pattern changed dramatically.



Management Tip 6

Consider Obtaining a Second (or Third) Opinion

If an employer doubts the validity of a certification, the employer can request a second opinion. This second opinion has to be completed at the employer's expense.

If the second provider doesn't agree with the initial certification, then a third opinion can be sought — which essentially serves as a tiebreaker between the original certification and the second opinion. The third provider must be designated by both the employer and employee, and the opinion of this third provider is final and binding.

Intermittent Absence in the Courts:

Oak Harbor Freight Lines, Inc. v. Antti

In this case, two employees brought claims against the employer, contesting the employer's policy requiring a doctor's note for each leave under FMLA and Oregon's Family Leave Act (OFLA). The employer argued the purpose of the policy was to verify intermittent leave was being used for its intended purpose. The court, however, found the policy essentially required employees to provide recertification for each intermittent leave taken, which is a violation of FMLA/OFLA regulations.

Unfortunately, the employer in this case could have avoided this situation had it complied with FMLA and OFLA's certification and recertification requirements. This highlights the need for employers to understand and follow FMLA's certification and recertification requirements (and state law requirements, when applicable).

Implementing Employee Accommodations to Reduce Instances of Leave



The root cause of an employee's intermittent leave sometimes can be reduced by providing the employee with a simple accommodation to help him or her to perform a job more effectively and/or lessen any pain or symptoms while at work.

For example, a common cause of intermittent leave is migraines. In this situation, it's difficult for an employee to predict when he or she will experience a migraine. However, there are different sensory triggers that can cause migraines, so accommodations can be tailored to specific individuals and what causes their migraine headaches, if known.

There are a few best practices for helping employees who are using intermittent leave to deal with their own health conditions:

- **Address the conditions early on.** Connect with employees to discuss why they are missing work and how you can work together to help reduce the cause or symptoms.
- **Create a plan and follow it.** Migraines, as noted above, can be triggered by different sensory stimuli — visual, auditory or olfactory. You can work with your disability provider and a consultant to determine reasonable accommodations, such as reducing fluorescent lighting, providing noise-cancelling headsets and/or designating fragrance-free areas at work.
- **Don't give up.** Even the best-laid plans can go awry. Keep in touch with employees to see how they're faring after accommodations are in place and whether additional or altered accommodations could help.

The Standard[‡] has helped many employers mitigate and reduce employee medical conditions that contribute to intermittent absences. Here are three real-life examples:



Success Story 1

Ergonomic Adjustments Reduced Medical Appointments

An administrative clerk suffering from constant pain due to herniated discs in her neck and lower back had high intermittent leave usage for medical appointments. Even though the FMLA specifies that employees should try to schedule appointments so they don't disrupt business operations, this isn't always feasible or practiced.

A consultant from The Standard's Workplace PossibilitiesSM program made ergonomic adjustments to her workstation and provided ergonomic training on preventive stretching. This training included using proper posture, avoiding awkward positions such as neck extension or twisting the lower back, and taking micro-breaks to stretch. Not only did the employee become more productive, she reduced her absences almost immediately.

The result: The employee, who took more than a dozen intermittent leaves and a few continuous leaves before the adjustments, didn't take any leaves of absence for this condition following the consultant's services.

[‡] The Standard is a marketing name for StanCorp Financial Group, Inc., and subsidiaries. Insurance products are offered by Standard Insurance Company of Portland, Ore., in all states except New York, where insurance products are offered by The Standard Life Insurance Company of New York of White Plains, N.Y.

Implementing Employee Accommodations to Reduce Instances of Leave



Success Story 2

Assistance Increased Productivity at Work

A Workplace Possibilities consultant provided assistance to a customer service representative who had back pain as well as a lifelong, serious gastrointestinal condition. She needed frequent bathroom breaks but found that challenging because of her responsibilities for telephone customer service.

First, the consultant connected the employee with her employer's Health Advocate program, which successfully referred her to a more effective treatment program for her gastrointestinal condition. Next, the employee was provided with ergonomic instruction and workstation adjustments to address her back pain. Her employer also contributed by changing her job responsibilities so she didn't have constant telephone duties.

The result: Even though the accommodations didn't eliminate the intermittent leaves entirely, the adjustments allowed the employee to increase her productivity.



Success Story 3

Simple Ergonomic Coaching Eliminated Leaves

A computer systems analyst was trying to manage back pain and fibromyalgia, but sitting and performing computer tasks contributed to her pain. In addition, she was reluctant to take available medications for the fibromyalgia because they made it difficult for her to focus and perform at work.

She met with a Workplace Possibilities consultant who fitted her for an ergonomic chair and coached her on ergonomics. After that, the employee was able to work with less pain.

The result: The employee, who took intermittent leaves and more than two months of continuous leave, no longer took leaves of absence for these conditions because of the consultant's help.

Although accommodations might not always eliminate the need for intermittent leaves, proactively addressing employee medical conditions can often reduce leaves and increase productivity. Rather than facing unpredictable, disruptive absences, you can help employees be productive, safe and engaged.

Intermittent Absence Can Be Managed

Intermittent leaves can create challenges for managers by disrupting productivity. If a recurring medical condition is causing frequent intermittent leaves, you might be tempted to let the employee go, which may make you subject to fines and legal action.

Instead, establishing a FMLA leave policy and procedures for you and your employees can go a long way to help ensure FMLA compliance within your organization. In addition, for your employees requiring intermittent leave, consider whether workplace accommodations may be appropriate for those individuals, to help them stay in good health and able to work.

What is Workplace Possibilities?

The Workplace Possibilities program is a unique, proactive approach to helping employers prevent and manage employee absence and disability. A Workplace Possibilities consultant can help connect employees with their health management programs and identify opportunities to help keep at-risk employees on the job or return to work faster. In doing so, the program helps deliver rapid and measurable reductions in absence- and disability-related costs.

About the Authors



About Lincoln Dirks

Lincoln Dirks, a senior compliance analyst for absence management, has been with Standard Insurance Company since November 2001. Lincoln obtained his Bachelor of Science degree in business

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About Sandy Johnson

Sandy Johnson is a disability and productivity consultant with Standard Insurance Company. She is a Master's level Certified Rehabilitation Counselor with several years of experience helping individuals with disabilities in

both the disability and Workers' Compensation arenas. In her current role, Sandy connects with employers to understand their culture and needs, and then helps them select vocational or medical case managers who will serve their employees. She oversees these services that help injured and ill employees stay at work or return to work as soon as possible.

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