

## **When may an employee be entitled to medical leave from work?**

An employee who is injured or ill may not be limited to sick leave, vacation, or personal leave if he or she needs time off. There are many other types of leave that an employer may be required to provide. For example, if the employee has a newborn or newly adopted child, or the employee or his or her family member has a serious health condition, the employee may be entitled to up to twelve weeks of unpaid leave per year under the Family and Medical Leave Act (FMLA). A serious health condition is an illness or injury requiring inpatient medical treatment or continuing outpatient treatment by a health care provider, or a chronic medical condition. Furthermore, many states have enacted their own family and medical leave statutes, some of which require employers to provide additional leave or paid leave.

Medical leave may also be an appropriate accommodation of a disability under the Americans with Disabilities Act (ADA). The ADA does not specify whether or what type of leave must be given to an employee who is disabled by an illness or injury, but courts have held that an employer may be required to provide leave beyond sick leave or personal leave if such leave would be a reasonable accommodation of a disability, as long as the leave is not unduly burdensome to an employer. A leave of one month might be unduly burdensome to a small employer who cannot hire a temporary worker to replace the disabled employee, but a leave of six months might not be unduly burdensome to a large employer who can hire a temporary replacement or reapportion duties. If the employer has allowed other employees to take long leaves for reasons that are not disability-related, such as sabbaticals for continuing education, a court may find that the employer is required to allow a disabled employee to take a similar leave.

An employee who suffers a work-related injury may be entitled to paid leave under the state's workers' compensation statute during the time when the employee is fully or partially disabled from performing his or her position. Such statutes often require the employer to offer the employee any available light duty position fitting the employee's physical restrictions, but if none is available, the employee is likely entitled to paid leave, which is covered under the employer's workers' compensation insurer.

Finally, an employer who includes a medical or personal leave provision in its employee handbook may be contractually bound to provide such leave to an employee who requests it. Each of these types of leave may be taken concurrently; in other words, an employer may count an employee's workers' compensation or personal leave towards the employee's annual twelve weeks of FMLA leave. However, if an employee has exhausted his or her FMLA leave, it does not automatically mean that he or she may be fired. Depending on the circumstances, the employee may then be entitled to additional leave, including leave provided for under workers' compensation law or as an accommodation under the ADA.

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