Managing Intermittent FMLA

The Family and Medical Leave Act (FMLA) is a Federal law that allows eligible employees to take up to 12 weeks of time off in a 12-month period (defined by IU as the calendar year) for certain qualifying reasons. FMLA does not have to be taken in a single period of time off; it may be taken intermittently in increments as small as six minutes. Since a “doctor’s note” or other form of verification cannot be requested to support the need for time off for individual absences, intermittent usage of FMLA can be prone to inappropriate use. What can supervisors do deter the inappropriate use of intermittent FMLA yet not discourage employees from taking legitimately-needed FMLA? Following are some tips for preventing abuse of FMLA:

Request Medical Certification

- Always request medical certification if the qualifying reason for the FMLA is a serious health condition for the employee or the employee’s spouse, child, or parent. The medical certification process is the most powerful tool in managing intermittent FMLA.
- Always include a copy of the essential job function form with the medical certification so the health care provider has a basis for responding to questions regarding the employee’s ability to work and need for time off.
- Hold employees to the 15-day time limit to provide medical certification unless they can demonstrate they have made a “good faith effort” to obtain it within the time line. In most circumstances, 15 days is a sufficient amount of time.
- Carefully scrutinize the medical certification form once it is received.
  - Check the “incapacity” questions. If there is no period of incapacity—which is necessary to meet the definition of a serious health condition—no FMLA is needed.
  - If incapacitated, is the employee able to perform the essential functions of the job?
  - Watch for conflicting information between incapacity and the employee’s ability to perform the essential functions of the job. If the health care provider marks “no” to Question 7 in Part A: Medical Facts of the medical certification form (Is the employee unable to perform any of his/her essential job functions due to the condition?), the health care provider is indicating that the employee can perform the essential functions of the position. Therefore, there will likely not be a need for Part B: Amount of Leave Needed to be completed since there is no need for FMLA.
  - Can you determine from the information on the medical certification the nature, frequency, and duration of the employee’s absences?
  - Responses such as “as needed,” “unknown” and “PRN” (whenever necessary) are not sufficient because they do not provide specific information and should not be accepted.
  - Make thoroughness the employee’s responsibility. If the certification is incomplete or insufficient, return the certification to the employee identifying (in writing) the additional information necessary to make the certification complete and sufficient. The employee is to be given seven additional calendar days to obtain the necessary information.
• The employee must cooperate throughout this process and if complete and sufficient medical certification is not provided, the requested FMLA leave may be denied. In addition the employee may not use any type of paid time off, and absences incurred may be subject to corrective action.

Utilize the Recertification Process
• Request recertification of the FMLA if the employee requests an extension of FMLA, the circumstances described in the previous certification have changed significantly, or you receive information that casts doubt upon the continuing validity of the previous certification. Recertification must be requested in conjunction with an absence.
• If recertification is requested due to the number and/or nature of the absences, the employee’s FMLA attendance record can be included with the medical certification form, and the health care provider can be asked if the absences are consistent with the serious health condition and prescribed treatment plan.

Establish and Communicate a Formal Call-in Procedure
• Your call-in procedure should include:
  o When the employee must call in; how soon before or after the shift begins
  o Who must call in; employee only or other family member
  o Who the employee must speak to; a supervisor or other department representative
  o Information that must be provided when calling in
  o To effectively manage absences it is recommended that you require the employee to call in and to speak with a supervisor. By requiring the employee to speak with a supervisor, the supervisor can ask appropriate questions about the reasons for the employee's time off:
    ▪ Don’t accept “I’m taking an FMLA day” or simply “FMLA.” It is the employer’s responsibility—not the employee’s—to determine if an absence qualifies for FMLA.
    ▪ For a previously approved FMLA, require the employee to specifically reference the qualifying reason (recommended because many employees have FMLA for more than one qualifying reason) and the anticipated duration of the leave.
    ▪ Although a supervisor may feel uncomfortable asking specific personal questions, the following are acceptable questions to ask in order to determine if an absence qualifies for FMLA:
      • When did the incapacity due to illness begin?
      • Is the employee able to perform normal daily activities?
      • If the absence occurred over a day off, what activities did the employee engage in?
      • When did the condition improve so the employee could resume normal activities?
      • How many times was the employee seen by a health care provider?
      • Was any treatment ordered?
      • If for a medical appointment, length of time for appointment and travel?
• Employees must follow the department’s procedures for requesting leave and calling in absences and provide sufficient information to allow the department to determine whether the leave request and absence qualifies for FMLA. If the employee simply calls in sick, does not follow the department’s call-in procedure, or does not provide sufficient information, the time off may not be designated as FMLA.
• Enforce the call in procedure consistently between FMLA and non-FMLA absences.

Monitor FMLA Usage
• Track FMLA time and when requested, inform the employee of the number of hours used and the number remaining (check with your payroll processor about reports available in TIME or ePTO that reflect FMLA usage). The calendar year maximum for a full time employee is 480 hours of FMLA.
• Monitor attendance for patterns, and if identified, request recertification.
• Allow only as much FMLA as needed—an entire day off usually is not necessary for a doctor appointment. Adequate time off for the appointment and travel to the appointment must be provided, and employees should be required to work immediately before or after the appointment when appropriate.
• Require employees’ cooperation in scheduling absences. Employees must consult with their supervisors and make a reasonable effort to schedule intermittent leave for planned medical treatment or appointments so it does not disrupt operations.

FMLA is an entitlement for eligible employees which necessitates a permissive approach. Supervisors must balance deterring inappropriate use of intermittent FMLA yet not discouraging employees from taking legitimately-needed FMLA. It is against the law to interfere with, restrain, or deny the exercise of (or attempts to exercise) any rights provided by the FMLA. Because of this supervisors may feel there is not much they can do to control FMLA-related absences. Individually these tips provided here may have a limited impact but collectively they allow supervisors to maximize productivity and curtail inappropriate use as much as possible within the parameters of the law.