

MANAGING INTERMITTENT FMLA LEAVES

DISCUSSION DO'S AND DON'TS



Phrases/Questions Before an FMLA Leave is Requested

- “What I’m hearing is that you may need to take some time off...”
 - “Is that correct?”
 - “You may qualify for job-protected leave under the Family Medical Leave Act. Have you considered reaching out to them to see if you’re eligible?”
 - “Here’s the contact information for our third-party administrator, FMLASource, if you choose to apply: <http://hr.wayne.edu/clientservices/employee-services/fmla.php>”

Optional: For individuals who are new and clearly not able to meet the minimum eligibility requirements of WSU Policy APPM 3.4.5, Family Medical Leave Act

- “It sounds as though you may have a need to be absent from work. FMLASource is our third-party administrator and the one who determines eligibility based upon FMLA regulations.
 - “I recommend that you contact FMLASource regarding FMLA eligibility. Should you not be immediately eligible, we can discuss if/how to address your needs while being mindful of the needs of our department operations. Also, if you have earned illness time, you can use your illness time for your own illness only.”

	Do’s	Don’ts
When Working with Newly Transferred or Bumped Employees	Consider the implications of the provisional/qualifying process. The timeframe for this process would be extended by the amount of time an employee was out on a qualified leave.	Determine FMLA eligibility yourself – always request FMLASource assistance
	<p>Note: probationary employees are not generally qualified for FMLA as eligibility is determined by length of WSU employment and hours worked in the past year.</p> <p>Use the FMLA WTE code of “FA” for capturing approved time off without pay after illness is exhausted</p>	
Options for Managing Workload in Existing and New Employee Absences	Keep in mind that temporary employment is an option to continue business operations	Post a role/seek a permanent replacement for an employee on an approved paid or unpaid leave
	Meet with the employee to determine how work responsibilities can best be covered. Refer to sample “ Work Responsibilities Coverage Form ” (A template from Harvard should your client find it helpful to customize)	Do not take adverse action or retaliate against an employee for taking approved paid or unpaid time-off
Tip:	Be aware of the Bermuda Triangle: Workers Compensation, FMLA and ADA (partner with OEO and Risk Management, when necessary)	

Phrases/Questions at Time of Notification of an Approved Intermittent Leave

Upon receipt of the decision letter indicating approval for:

- **Foreseen Absences for Appointments/Treatment or Care of a Loved One.**

“I see you’ve been approved for an intermittent leave consisting of ___ (duration/frequency)__. I’d like to work with you to see how we can best accommodate any foreseen absences/leaves, hopefully in a way that minimizes any disruptions to our department.”

- “I am so sorry to learn about your illness/your loved one’s illness. What type of support might you need during this period?”
- “Do you already have scheduled appointments? Have you confirmed if pre-planned appointments can be scheduled at hours that minimize your hours missed from work?” (Note: this is to the employee’s benefit as FMLA time is unpaid).
- “Knowing your schedule in advance will help us to plan our work. Thanks for providing a confirmation of the dates/times (via an Outlook notice? Through email?) and notifying me in advance if there is a need to alter this schedule.”
- "This will help me as I approve your Web Time Entry. I’ll also receive periodic updates of your status. Just a gentle reminder that should you have a need to call in with an unplanned absence, we won’t be able to use the FMLA time off code of (see below options) unless it is associated with this need for treatment and any change to your approved schedule is approved by FMLASource.”

- **Unforeseen Absences for Episodes.**

“I see you’ve been approved for an intermittent leave consisting of ___ (duration/frequency)__. When the need arises to be absent, please be sure to utilize our call-in procedure of _____ and indicate that you’ll be using WTE code of _____.”

- “As we move forward, if we find that your FMLA related absences frequently exceed the estimated parameters your doctor certified, you may be requested to recertify. This should be done early enough and proactively enough to ensure that your FMLA related absences are being taken in accordance with the appropriate WTE codes and align with what’s been approved in the decision letter.”

	Do’s	Don’ts
Approved Planned Absences For Treatment (Insert definition)	Plan to manage the workload in the employee’s absence.	Ask about/discuss the nature of the employee’s absence. Details about a personal illness could violate HIPAA regulations. It’s OK to discuss the schedule and work implications of an absence, just not the nature of it. Be inconsistent in your approach to managing FMLA leaves for your staff.
Approved Planned Absences For Care of a Loved One	Identify if an “out of the message” message should be shared on phone/email during absences.	
Approved Unplanned Absences for Episodes (Insert definition)	Inquire about what message should be given to co-workers about the employee’s absence and who will share it.	

	Do's	Don'ts
	<p>Identify if/how the call-in process should be used and that you'll be inquiring about which WTE code the employee will be using for which approved leave (if multiple) at the time of an unscheduled absence.</p> <p>Ensure that all planned absences are scheduled in advance.</p> <p>Share that you'll be monitoring absences to ensure accurate time-off reporting.</p>	<p>Contact the employee's medical provider. Communication with the employee's medical provider should be handled by your HR Consultant and/or FMLASource.</p>

Phrases/Questions When Employee is Out of Compliance on an Approved Leave

- **Frequency/Duration.**

"I noticed an inconsistency recently in your absences and the FMLA approval leave as noted in the decision letter. The letter indicates __ (frequency/duration) __ however, this was surpassed on X dates/times. (In a calm, non-accusatory tone) What's happening?"

- **If leave-related:** "It sounds as though as requesting a medical recertification may be appropriate. Please reach out to FMLASource to inquire about this."

Note: 2nd and 3rd opinions can be requested in instances where WSU has received a complete and sufficient certification but has a reason to doubt its validity. HR Consultants should be providing guidance and facilitate this process. While waiting for 2nd/3rd opinions, the employee is provisionally entitled to FMLA.

However, 2nd opinions can only be considered at the beginning of a leave and BEFORE any determination on the leave has been made.

- **If non-leave related:** "It sounds as though other reasons are contributing to your need to be absent. You're very important to our operations and we count on you to be here for our (students, faculty, co-workers). What options are available to minimize your absence?" (And, if appropriate: How can I help?)
 - "Please note that if these absences continue, you may wish to continue monitoring how they align with what's allowed under our APPM 3.0.11 Attendance for Non-Academic and Non-Represented Academic Employees policy."
 - "It has come to my attention or I have noticed that you have been taking FMLA leave time for an illness that is not in accordance to your approved FMLA leave, as shown in your decision letter. I will be reaching out to our HR Consultant to request a 2nd opinion from an independent health care provider to confirm your request and need for FMLA."

Phrases/Questions When Employee’s Absences Reflect a Pattern

- **Patterns.**

“I noticed an interesting trend to the dates of your FMLA absences. It appears as though they typically fall on (Mondays/Fridays, days of important department deadlines, etc.). (In a calm, non-accusatory tone) What do you feel might be causing this?”

- **If leave-related and not out-of-compliance with the frequency/duration of the approved leave:** “OK, I can see why this is occurring. Thanks for sharing it. I’ll make a note of these circumstances. Please let me know if scheduling/circumstances change in the future.”
- **If leave-related and out-of-compliance with the frequency/duration of the approved leave:** “It sounds as though as requesting a medical recertification may be appropriate. Please reach out to FMLASource to inquire about this.”
- **If non-leave related:** “These circumstances seem to be outside of the approved FMLA leave as highlighted in your decision letter. You’re very important to our operations and we count on you to be here for our (students, faculty, co-workers). What options are available to minimize your absence?”
 - Please note that if these absences continue, you may wish to continue monitoring how they align with what’s allowed under our APPM 3.0.11 Attendance for Non-Academic and Non-Represented Academic Employees policy.

Do’s	Don’ts
Reference the approval for time off in the decision letter.	Be accusatory. Strive for a tone that reflects a non-judgmental observer.
Exhibit concern for the employee.	Monitor an employee’s time-off yourself in outlets such as social media or asking co-workers about an employee’s whereabouts/ physical capabilities.
Highlight the importance an employee’s attendance on work operations.	Assume the worst automatically. It is possible the changing circumstances warrant a medical re-certification. Your HR Consultant will need to assist with this.
Allow a represented employee the option to bring a union representative to the discussion about FMLA absences should they ask to do so. If this happens, notify Labor Relations and your HR Consultant, prior to the meeting with the employee.	Significantly alter a position’s responsibilities or salary while an employee is on approved leave. If such changes are desired, always consult with your HR Consultant and Labor Relations (for non-academic, represented roles).
Document discussions by highlighting the variance between actual and approved time off, the employee’s stated response/ reason for the variance and agreed upon next steps (i.e. requesting medical recertification, second opinion).	Adversely impact an employee for work not accomplished while on an approved leave in WaynePM or other performance management system.
Ensure the call-in procedures are established, actively monitored and require that the employee provides the	

<p>WTE code and the type of approved leave each time s/he has an unplanned absence.</p> <p>Be aware that your HR Consultant may have options should you suspect time-off abuse. Always reach out to him/her when questions arise. Also contact Labor Relations with questions for non-academic represented employees.</p> <p>Offer Employee Assistance Program support as an option when warranted.</p> <p>Place all leaves correspondence in an email folder for the employee to stay organized.</p> <p>Be aware that short-term and long-term disability may be options for an employee when leave banks run out. An employee should inquire directly about eligibility with Total Compensation & Wellness.</p>	<p>Discipline or terminate an employee for any absence that may be covered by FMLA.</p> <p>Contact an employee on an approved leave to request him/her to complete work. It is OK to contact an employee to inquire or verify return-to-work date towards the end of the employee’s leave period. If the employer has suspicions regarding FMLA abuse, the employer may contact an employee to inquire whether the employee’s leave still qualifies for FMLA purposes. Contact with employees should be done on a limited basis and in consultation with your HR Consultant.</p>
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Phrases/Questions for Discussion Derailers/Sidetracks

Conversations may at times veer into areas you wish to steer-clear of. Consider these phrases when this occurs:

- **TMI (“Too Much (Personal) Information” being shared).**
The goal in these discussions is to transition the discussion into the logistics surrounding the absence and not the nature of the absence itself. Helpful transition phrases could include:

 - “Thanks for sharing. Let’s focus our thoughts now to.... (Schedule, recertification request, etc).”
 - “I can appreciate all you’re going through. Let’s consider....”
 - “I believe you might be experiencing something that could be relevant for (scheduling/ recertification, EAP etc.)... “

- **Perceived Excuses.**
The goal in these discussions is to focus on approved absences and options/next steps when an employee is out of compliance. Phrases to re-focus the discussion could include:

 - “Right now, let’s come back to variance in time taken versus approved and our next steps...”
 - “You raise an interesting perspective that we can review at another time (if appropriate). For now, let’s return to what we’ll do next...”

- **Employee Asserts that FMLA Rights Are Being Violated**
The goal in these discussions is to ensure the employee that you are concerned for their wellbeing and are dedicated to ensuring fairness and compliance with FMLA laws while appropriately managing business operations. Phrases to re-focus the discussion could include:

- “I want to assure you that I have no intention of violating your right to FMLA. My specific concern is...”
- “If you feel as if I am being unfair, let’s set up a meeting with our HR Consultant so that she/her can assist us with navigating the concerns that I have regarding....”

Phrases/Questions for Return-to-Work

As an intermittent leave is nearing completion as evidenced by the decision letter allowance, consider checking in with the employee:

- “I see that your approved leave time is nearing an end. Are you on track with returning on X date?”
 - If not: Suggest requesting recertification with FMLASource.
- “Do you foresee any challenges to completing your essential job functions?”
 - If you suspect support will be needed, consult your HR Consultant to explore options. S/he may connect with the Office of Equal Opportunity if appropriate to explore if reasonable accommodation is warranted under the Americans with Disability Act.

Optional considerations:

- It may helpful to invite the employee to a return to work meeting to regroup on priorities and transition (if appropriate) of responsibilities
- Check in periodically afterwards to unobtrusively ensure the employee is transitioning OK

Do’s	Don’ts
Ensure all essential functions can be performed upon completion of an employee’s approved time off. Refer to the job description as needed.	Make “accommodations” on your own for an employee should they request one. WSU has a legal obligation to comply with The Americans With Disabilities Act (ADA). An employee’s FMLA condition might be covered under ADA. Always consult with your HR Consultant on requests.
Consult your HR Consultant to determine specific return-to-work provisions outlined in the non-rep manual or collective bargaining agreements (contact Labor Relations for non-academic represented employees).	