

FMLA UPDATES & KEY NEWS HR CONSULTANT GUIDE

*Provided by OED & TCW
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DRAFT

Contents

Course Overview	4
Ice Breaker.....	4
Learning Objectives	4
Family Medical Leave Act (FMLA) – A Review	5
What’s New	5
The Definition of Spouse	5
Maternity Leave.....	5
Parental Leave	6
FMLASource Changes – Employee Correspondence.....	6
Decision Letter – Revised	6
Designation Notice – Revised	6
Auto Denial Process.....	6
FMLASource Mobile App.....	7
WSU’s FMLA Leave Process (2015)	7
Understanding the importance of University Compliance.....	8
Failure to notify an employee of FMLA rights.....	8
Discrimination and Retaliation Claims.....	9
Employer Do’s and Don’ts.....	9
When an Employee Shares a Doctor’s note	9
What else can go here? What NOT to do exercise?.....	9
Failure to exercise Employer Rights	9
HR Consultant Roles & Responsibilities.....	9
Monitoring Leave Time.....	11
FMLA Approved Continuous Leaves.....	11
A Manager’s Guide to Tracking FMLA Intermittent Leaves	11
Set clear call-in rules.....	12
Question the Original Certification.....	12
Ensure that all absences related to the condition are counted	12
Require employees to follow paid leave policy.....	12
Ask for a Second Opinion	13
Follow up on changed or suspicious circumstances.....	13
Request an Appointment Card	13
Control the way that employees schedule planned treatment	13
Consider temporary transfers	13
Absence Management.....	13

How to Track Intermittent Leaves..... 15

Using the Intermittent Trend Dashboard Report..... 15

Exceeding Frequency and/or Duration..... 15

Pattern of Usage..... 16

Returning to Work..... 16

 Return to Work Notes 16

 Return to Work Exams..... 17

Scenarios & Case Studies..... 17

 Scenario 1 17

 Scenario 2 17

 Scenario 3 17

 Case Study 1 17

 Case Study 2 17

 Case Study 3 17

Session Summary..... 17

Q&A 17

Assessment..... 17

Evaluation..... 17

Additional References 17

Links of Interest..... 17

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Course Overview

This leader-led session is the first phase of training that is intended for HR Consultants who help administer the FMLA process at Wayne State University. This session is tailored specifically to HR Consultants in preparation of guiding Managers/Supervisors after they have attended training (second phase of training to be offered to Managers/Supervisors in September 2015). This session offers a brief refresher of FMLA with updates and changes on federal and state regulations. Techniques on how to utilize reports to effectively track leave time and identify next steps in effort to maintain compliance will be presented. Coaching strategies for guiding Managers/Supervisors through the FMLA process and addressing problematic trends will be presented. Case studies and specific scenarios on how to curb abuse of FMLA leaves will be examined.

Ice Breaker



We will begin our session with an ice breaker that will provide a refresher on the Family Medical Leave Act. Should you struggle with today's icebreaker, you may find it helpful to visit the US Department of Labor website or seek FMLA training via Accelerate as needed.

Learning Objectives

By the end of this session you will have the knowledge and skills to perform the following tasks:

- Identify new FMLA rules and regulations
- Recognize the FMLA Source Correspondent changes
- Follow WSU's clarified FMLA Leave Process more accurately
- Coach managers/supervisors in understanding the importance of University Compliance
- Distinguish your roles and responsibilities
- Manage Leave time through
 - Using Intermittent Trend Dashboard Report and other available reports
 - Identifying when and Independent Medical Exam is warranted
 - Outlining Return to Work requirements and business process
- Coach Managers/Supervisors with an understanding of best practices, new tools and resources including:
 - Do's and Don'ts when consulting with Employees
 - Coding Time Accurately (FMLA, Illness, STD, LTD, etc.)
 - Implementing Intermittent Tracking Sheet (Excel Spreadsheet)
 - Implementing a call-in procedure and other standard Unit policies
 - Identifying when a recertification is warranted
 - Using appropriate (legal) catch phrases when consulting with Employees

Family Medical Leave Act (FMLA) – A Review



As you know, the Family and Medical Leave Act (FMLA) is designed to help WSU employees, our customers, balance their work and family responsibilities by allowing them to take reasonable unpaid leave for certain family and medical reasons. It also seeks to accommodate the legitimate interests of employers and promote equal employment opportunity for men and women. Let's take a moment to review the Rights & Responsibilities Under the Family & Medical Leave Act as provided by FMLASource.

What's New

Your role in the FMLA administration process in understanding, communicating and complying with state and federal FMLA leave regulations help reduce confusion and FMLA leave abuse. The following topics offer the latest FMLA updates and key news to help you ensure WSU remains in compliance.

The Definition of Spouse

Effective March 27, 2015 the US Department of Labor has moved from a "state of residence" rule to a "place of celebration" rule for the definition of spouse under the FMLA regulations. A place of celebration rule allows all legally married couples, whether opposite-sex or same-sex, or married under common law, to have consistent federal family leave rights regardless of where they live.

This change means that eligible Employees, regardless of where they live, will be able to:

- take FMLA leave to care for their lawfully married same-sex spouse with a serious health condition,
- take qualifying exigency leave due to their lawfully married same-sex spouse's covered military service, or
- take military caregiver leave for their lawfully married same-sex spouse.

In a April 3, 2015 communication, a court ruling (*Texas v. U.S.*) has warrented this new rule as unclear and is still being reviewed by the Department of Labor (DOL). In the meantime, the DOL has advised us to apply the new rule in all jurisdictions other than those affected by this case. In other words, we will aply the new definition of "spouse" to all employees except those who reside in Texas, Louisiana, Arkansas and Nebraska.

Maternity Leave

Effective March 25, 2015 Effective March 27, 2015 the US Department of Labor has revised the rules of Maternity Leave as follows.

- Leave an eligible female employee may take prior to the date of delivery for bed-rest, prenatal appointments and any medical necessity related to pregnancy or child birth.
 - *Bed Rest*: Leave prior to delivery date due to a medical condition or high-risk pregnancy.
 - *Pre-Natal Treatments*: Leave prior to the delivery date for appointments with a healthcare provider that follows a standard prenatal treatment schedule.
- Leave an eligible female employee may take after the date of delivery. For Wayne State University employees this leave is typically 8 weeks for both Natural and Caesarean Delivery.

Parental Leave

Effective March 25, 2015 Effective March 27, 2015 the US Department of Labor has revised the rules of Parental Leave as follows.

- Leave taken after the birth of a child for a parent to bond with his/her child. This leave is not for a medical condition.
- For mothers of a newborn child, this leave is typically 4 weeks, depending on how long the employee is eligible for, and opts to take, of their entire 12-weeks of FMLA entitlement.
- Fathers of a newborn child who are eligible for FMLA and have their full FMLA entitlement may take up to 12 weeks of leave to bond with the child.
- Parental leave for mothers and fathers must be taken within one (1) year of the birth of the child.
- If a husband and wife both work for Wayne State University, they must share the 12-weeks of parental leave between them, subject to each of them being eligible for FMLA and having enough FMLA entitlement to cover the requested period of time.

FMLASource Changes – Employee Correspondence



Decision Letter – Revised

The Decision Letter (sent to the Employee after certification has been submitted to FMLASource) has been revised to provide more accurate verbiage and information regarding treatments/appointments. It also includes specific entitlement availability.



Designation Notice – Revised

The Designation Notice (sent to Employees within 5 days of receiving complete and sufficient certification) has also been revised and includes information on notification requirements, new TCW phone number and more. This document is used in conjunction with FMLASource reports to track employee patterns and frequency of absences to determine possible inconsistencies.

FMLASource administers WSU's FMLA policy in accordance with the applicable provisions of any Collective Bargaining Agreement (CBA) in effect with WSU. WSU's FMLA policy does not modify, affect or diminish any rights provided to employees under an existing CBA. WSU will provide leave under and according to whichever statutory provision or CBA that provides the greater rights to its employees.

Auto Denial Process

As you are aware, an Employee is given 15 days to produce medical certification. Previously, if medical certification was not provided, the claim remained in pending status. Effective April 15, 2015 all eligible employees requesting a leave of absence related to FMLA, will be required to submit appropriate paperwork within 15 calendar days of their request. Failure to do so will result in an automatically denial of the leave with the appropriate denial letter being issued. FMLASource will send a decision/denial letter to the Employee and an

email copy of the letter is sent to their Manager/Supervisor (as listed in Banner) and HR Consultant. The Employee is given 7 additional days to correct any deficiencies in their medical certification. Old and non-current FMLA leaves for which no supporting medical certification was ever received, and which are currently in pending status, will have a denial decision issued and be closed.

FMLASource Mobile App

A new mobile app, *FMLASource NOW*, is available for on-the-go access to FMLASource. Employees can track time, view leave status, update leave dates, check Q&A and view contacts. Employers can track time, view leave status, update leave dates, check Q&A and request an emailed report. The app cannot be used to initiate a claim or view past letters. The mobile app is free as a GooglePlay and Apple iOS application (search for FMLASource Now).

WSU's FMLA Leave Process (2015)



While there are a broad range of sensitive and inopportune leaves of absences, it's important to adhere to WSU's policy as much as possible to ensure University compliance. Below is a guide to WSU's FMLA Leave process. Explicit roles and responsibilities will be discussed in the next section, *Enhanced HR Consultant Roles & Responsibilities*.

- 1. The Employee will contact FMLASource to submit a leave request.** The employee will speak with an experienced FMLA Source Human Resource Specialist who will explain the following:
 - Correspondence that they will receive in the mail regarding their FMLA claim
 - Medical documentation that is needed from the employee's health care provider
 - The employee's FMLA responsibilitiesEmployees may sometimes resort to contacting their Manager/Supervisor to inform them when they will be absent. If the Employee's absence exceeds 3 consecutive days or an inpatient hospital stay, the Manager/Supervisor should redirect employees to FMLASource as appropriate.
- 2. FMLASource will provide the employee with Notification of Eligibility and Rights & Responsibilities.** The initial request letter is sent to the Employee and their Manager/Supervisor. FMLASource will provide written notification to an Employee within 5 business days and request that the employee provide medical certification to support FMLA leave within 15 calendar days after their request.
- 3. Employee submits Medical Certification form to FMLASource.** A Medical Certification Form from their treating physician must be submitted to FMLASource within 15 calendar days.
- 4. FMLASource reviews Employee's Medical Certification form and sends Decision Letter.** If the required medical certification form is not received within 15 days, FMLASource will automatically send a denial letter. All approval and denial letters are sent to Employee within 5 calendar days. The Employee's Manager/Supervisor (as listed in Banner) and HR Consultant will receive an e-mail copy of the letters. The Employee is given 7 additional days to correct any deficiencies in their medical certification.
- 5. Schedule Leave Type based on Decision Letter.** The leave type is determined by the treating physician. HR Consultant will assist Manager/Supervisor and collaborate with Employee to determine intermittent or reduced schedule.

6. **If requested by Unit, the HR Consultant schedules 2nd and 3rd opinion Independent Medical Exam (IME).** HR Consultants will collaborate with FMLASource and contact MedSource to schedule exams. Employees will receive a notification from MedSource; however, HR Consultants will also send a letter to the employee and manager/Supervisors.
7. **Monitor Employee leave time.** HR Consultants will provide guidance to Manager/Supervisor with tracking leave usage and compare to Decision Letter to identify employees with patterns, change in frequency of duration and determine if a re-certification IME is warranted. In addition, HRCs will provide Absence Management, collaborating with FMLASource and TCW, to identify leave abuse, and request IME. **Excel Tracking Tool – who does what?**
8. **Verify Return to Work Certification.** TCW will schedule Return to Work exams as needed when Employee returns from a Continuous leave. Medical documentation must be verified and any work restrictions/accommodations must be channeled through HR Consultants and OEO in conjunction with the Unit and Labor Relations.
9. **The Employee is reinstated at the same/equivalent position.**

Understanding the importance of University Compliance

The University may be held liable if it fails to maintain compliance. The content that follows are some of the most common reasons to consider in maintaining compliance.

Failure to notify an employee of FMLA rights

An Employee does not need to specifically assert rights under FMLA or even verbalize the act to invoke its protection. The following is a list of examples of notices provided by Employees that the courts deemed sufficient.

- “I need time off to have nasal surgery”*
- “I need to work part time to care for my sick spouse”*
- “I need time off to get my life back together” (victim of domestic violence)*
- “I need to leave early. My migraine is killing me”*
- “I need every Friday off for chemotherapy treatments”*

The following are examples of notices provided by employees that the courts held were insufficient.

- “I am sick”*
- “I am having personal/family problems”*
- “I want to stay home with my wife until she has the baby”*
- “My father is sick”*
- “I need to take care of my daughters kids because she just had a baby”*
- “I have a bad cold and won’t be in today”*

The University is required to notify employees of rights under the FMLA and track leave time appropriately. Failure to code an employee’s leave as FMLA could result in disciplinary action against WSU. With that said, it’s important to follow a standard attendance protocol.

Discrimination and Retaliation Claims

Employers who express dissatisfaction when an employee seeks to exercise his or her rights under FMLA often open themselves up to liability based on a theory of discrimination or retaliation claims. To avoid such claims Managers/Supervisors should avoid the following:

- Making negative comments about the employee’s use of FMLA in person or in performance evaluations or other documentation that will be placed in the employee’s personnel file (eligibility for rehire, etc.)
- Documenting sudden negative changes in job performance immediately following an employee’s request for FMLA.

Employer Do’s and Don’ts

	Do	Don’t
When an Employee Shares a Doctor’s note	<ul style="list-style-type: none"> • Ask if the employee contacted FMLASource to investigate FMLA eligibility. • Forward the note to HRC • Partner with HRC if restrictions 	<ul style="list-style-type: none"> • Keep a copy of the note in your own files. • Request information about the medical diagnosis or ask for any more information. • Contact the doctor directly.
What else can go here? What NOT to do exercise?	•	•

Failure to exercise Employer Rights

Employer phrases that will not violate Employee rights and FMLA – Lila and Dawn to provide

HR Consultant Roles & Responsibilities



As an HR Consultant, you can appreciate that there are many tasks and support teams involved in the FMLA process. While this session will focus on the changes in the roles and responsibilities of the HR Consultant, it is good business practice to become familiar with the roles and responsibilities of each support team. Understanding how the FMLA process works at WSU will ensure clear communication, avoid delays and reduce leave abuse. Please refer to the [APPM 3.4.5 Family and Medical Leave Act - WSU Policy & Procedure](#) as needed to become more familiar with these roles and responsibilities. Your specific roles as an HR Consultant are outlined below.

1. Ensure policy and collective bargaining agreement compliance by
 - a) Providing assistance with interpretation and application of CBA;
 - b) Partnering with University S/C/D to ensure compliance with University policies procedures, practices and contractual agreements, in addition to state and federal employment laws.
2. Provide advice and counsel (in partnership with Labor Relations and as needed, Office of Equal Opportunity and Office of General Counsel) by

- a) Participating in conflict resolution by investigating formal and informal complaints. Gather data, facts and make recommendations to resolve complaints.
3. Support our customers with FMLA leave administration (in partnership with FMLASource) by
 - a) Providing employees with information regarding FMLASource, brochures, direct employees to HR website, and/or FMLASource website
 - b) Advise employee to file for FMLA when receiving notice sufficient to indicate employee need for FMLA-qualifying leave. This includes sending doctor's note, etc., to FMLASource (FMLASource continues to maintain all employee medical files.)
 - c) Assisting customers with intermittent and reduced schedule type leaves; Employer cannot request exam and must work with FMLASource to resolve issues and/or request recertification.
 - d) Consult with Managers who identify abuse of leave.
4. Work with Managers in identifying when recertification is needed such as when
 - a) Changing intermittent leave to continuous
 - b) Absence is inconsistent with Decision letter, beyond scope of leave, provide FMLASource with information regarding attendance record to demonstrate inconsistency with Decision letter as needed.
 - c) Extension of FMLA is requested (may be for health reasons)
5. Review FMLA appeals and retroactive FMLA claims responding to appeals as they arise (FMLASource will email and coordinate with HRC and employee returning to work with restrictions; this info is provided to employee when leave is approved.)
6. Seek second and third medical opinion when medical certificate is doubtful and before claim is approved.
 - a) Contact the appropriate third party (such as MedSource) to schedule an appointment with an examining specialist (a notification is sent to the employee by the third party). The third opinion must be approved jointly by WSU and the employee.
 - b) Send a letter to the employee and provide the examining specialist with employee medical information and specific questions that need an answer.
7. Notify BAO with requests for employee to return to work with restrictions and contact the Office of Equal Opportunity, as needed to confirm accommodations.
8. Notify BAO with employee eligibility for leave of absence.
 - a) Refer to Request for Leave and Weekly Status Reports (New requests, New Decision and Open Leaves) and contact FMLASource with questions.
9. Review FMLA claims filed for employee on same dates as serving discipline as a possible attempt to avoid discipline. Discuss with FMLASource
10. Review employee information regarding leave of absence, short term disability, continuation of benefits (in partnership with Total Compensation & Wellness). To verify continuous leave hours, contact TCW (to do bank run-out) and leave / benefit questions.
11. Monitor employee intermittent leave usage by running an Employee Tracking Report located at ComPsych website and contact FMLASource AM for any updates in leave status.
12. Review recording of proper leave codes, dates, and leave hours to assist units with accurate time recording of employee FMLA leave time

13. Assist units with tracking process for intermittent leave usage – appointments versus episodes by
 - a) Confirming whether leave is for appointment or episodic
 - b) Requesting employees to provide appointment card for scheduled appointments; (exclude health info, HIPAA)
 - c) Notifying FMLASource of additional call-ins (taking PTO before/after leave, manager authorizations)
14. Initiation of Peer to Peer Review to formulate questions for Peer Review for FMLASource
15. Verify Return to Work (RTW) documentation working with Unit and Labor Relations as needed for restrictions (employee is required to provide a return to work note)
16. Manage Absences through an intermittent trends analysis by comparing FMLASource reports to TCW reports to identify employees with patterns, change in frequency of duration; compare to medical certification and to determine if a re-certification is warranted.
17. Provide Employees with an overview of FMLA “Your Rights and Responsibilities” and Policy Designation Notices (see hand out example)

Monitoring Leave Time

As you are aware, there are a few options for how employees take their leave of absence.

1. Continuous or Consecutive – employees miss every day of work
2. Intermittent – Employees absences are sporadic or episodic
3. Reduced Schedule – for specific days/hours to be missed

As noted in the FMLA Rights & Responsibilities documentation, FMLA provides an entitlement of up to 12 weeks of job-protected, unpaid leave during any 12-month period; however, leaves of absences can be supplemented by paid time off (vacation and sick banks) or short term disability (up to 26 weeks).

Paid and Unpaid FMLA Leaves – Benefits & Reporting Time off

Is this still something HRCs are doing? TCW? Procedure on how to handle illness time and banks once FML is exhausted by contract has been requested.

FMLA Approved Continuous Leaves

FMLASource notifies WSU through the Daily Report when an employee’s approved leave is projected to become in an unpaid status and/or FMLA entitlement will be exhausted.



All HR Consultants will assist Managers/Supervisors with calculating Bank Run Out. If banks have been exhausted, HR Consultant will determine if employee is eligible for other benefits (Short Term Disability, Leave of Absence or Long Term Disability)

The HR Consultant will prepare the Decision Letter and copy appropriate parties.

A Manager’s Guide to Tracking FMLA Intermittent Leaves

While there is not a one size fits all situation, there are some guidelines Managers/Supervisors can take to set clear expectations and reduce FMLA leave abuse. An employee’s ability to take small increments of FMLA leave

sporadically generates administrative headaches and raises concerns about Employee abuse of intermittent leave. Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions, or disciplinary actions; nor can FMLA leave be counted under "no fault" attendance policies. The FMLA offers a number of tools that you can use to discourage abuse of intermittent leave. Here are some strategies provided by for handling this matter.

Set clear call-in rules



Managers and Supervisors are advised to set clear call-in rules (in writing) for all employees (not just those taking leave) and specify by when an employee must call in, to whom and what information must be shared/left when calling in. Also include specifics such as whether or not email or text is acceptable or if the employee must talk to a specific individual. If an Employee repeatedly fails to abide by the unit call-in rules, he or she may be disciplined for not following University policy and procedures (not for taking FMLA leave). A Manager/Supervisor may find it difficult to keep an individuals' performance separate from that person's use of MLA leave. **The best way to address this is to keep performance issues at one level, such as with a manager, and FMLA issues with someone else, such as HRC.**

Question the Original Certification

This is particularly for chronic conditions such as asthma or migraines. Ensure that the certification is complete. Ask the Employee to provide completed and sufficient information. This request must be in writing and specify the reason the certification was considered incomplete or insufficient. The employee must provide the additional information within seven days otherwise the leave may be delayed or denied. Also seek authentication and clarification when the certification is suspicious. You can contact the health care provider via your HRC to ensure that he or she actually prepared the certification and to clarify handwriting or the meaning of a response but you must go through HRC to make contact. The manager/supervisor may not be the one who contact the health care provider.

Ensure that all absences related to the condition are counted

Managers/Supervisors must effectively track all absences related to the condition and counted against the employee's FMLA entitlement, while at the same time ensuring that they are not counted against the employee under a no-fault attendance policy. Since the U.S. Labor Department have held that the employee does not have to cite to the FMLA in a request, identifying FMLA absences is not simple. Managers/Supervisors must notify HRCs any time an employee is out for more than three days with an illness, particularly if the employee saw a physician during that time. Information on how to effectively track intermittent leave will be discussed later in this lesson.

Require employees to follow paid leave policy

For intermittent FMLA absences, WSU requires that Employees use up paid leave time in effort to prevent the situation where an employee can take paid leave after their FMLA leave expires and there by extend a leave of absence beyond the FMLA entitlement. The 2008 FMLA regulations state that Managers/Supervisors my require employees to abide by paid-time-off policies in order to be paid for FMLA leave time. For example, you may require the employee to call a certain person or particular telephone number to notify the organization of an FMLA absence. While a request for a doctor's note for every absence is not warranted if there is a valid medical certification in place, if you have a written paid-time-off policy that calls for it, you may require a doctor's note for paid-leave time. FMLA leave cannot be denied if they employee fails to provide the note and the leave time would be unpaid. The prospect of a paid leave provides a strong incentive to comply.

Ask for a Second Opinion

If Employees are not performing or if Managers/Supervisors have reason to doubt the validity of a certification, they may ask for a second opinion or an Independent Medical Exam (IME). If the first and second opinions differ, you may require the Employee to see a third health care provider. Second and Third opinions cannot be sought on recertification (discussed later in this session under Absence Management).

Follow up on changed or suspicious circumstances

Managers/Supervisors can seek recertification more frequently than thirty days if the circumstances described by the existing certification have changed or the Manager/Supervisor receives information that casts doubt on the employee's stated reason for the absence. Such information that casts doubt may be information you receive from other employees about activities that the employee is engaging in while on FMLA leave that are inconsistent with the employee's health condition (i.e. an employee playing softball while on leave for knee surgery).

Request an Appointment Card

An employee must provide notice to WSU with at least 30 days advance notice before FMLA leave is to begin if the need for the leave is foreseeable. If unable, give notice as soon as practicable. For planned medical treatment, the employee must consult with the employer and try to schedule the appointment at a time that minimizes the disruption to the employer. Managers/Supervisors can request employees to provide an appointment card for scheduled appointments (or a doctor's note after the appointment) and clearly communicate attendance policy to encourage this practice.

Control the way that employees schedule planned treatment

The FMLA regulations require that employees schedule absences for planned medical treatment in a way that least disrupts your operations. When intermittent requests are made, Managers/Supervisors should communicate with Employees about the frequency of the treatment, the office hours of the health care provider, and ways that the employee may be able to alter the schedule to cut down on disruptions.

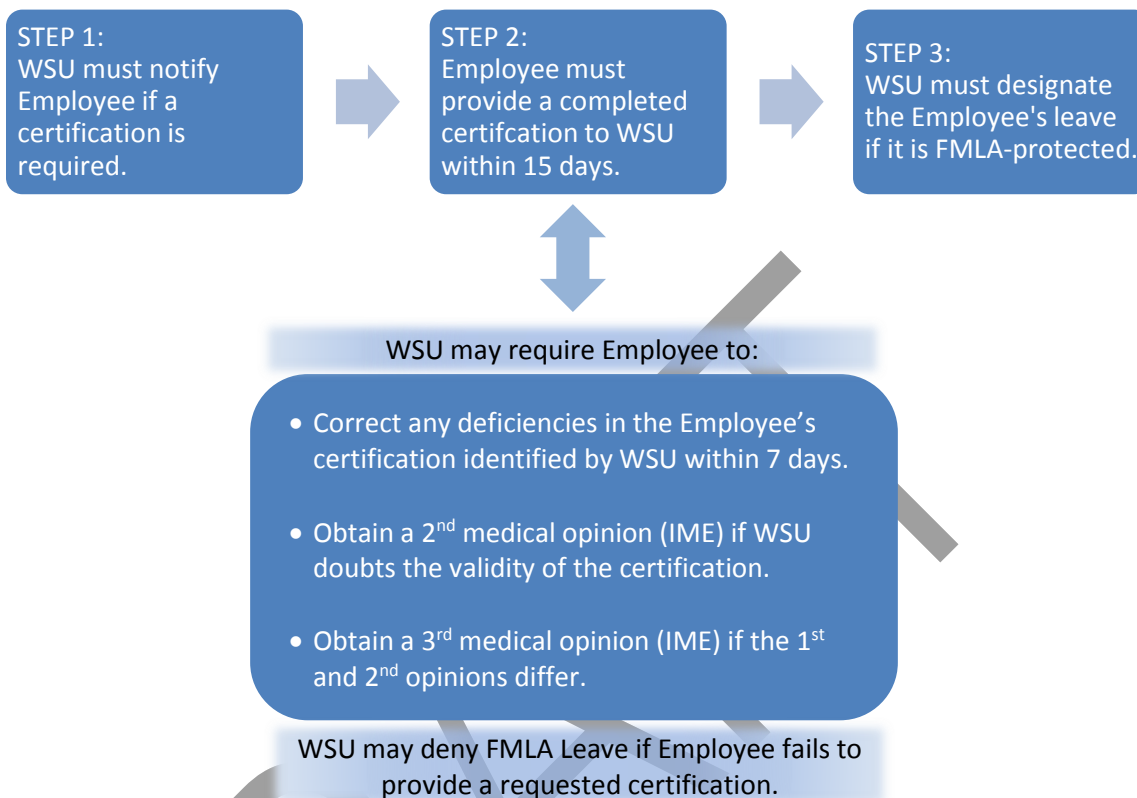
Consider temporary transfers

If the leave is foreseeable or in the event that intermittent leave becomes too disruptive, Managers/Supervisors can transfer the employee during the period of intermittent leave to an available alternative position for which the employee is qualified and which better accommodates the recurring periods of leave. While the duties do not need to be equivalent, the pay and benefits of the alternate position must be equivalent. Another option is to allow the employee to work in the current position but on a part-time basis with the same hourly pay rate and benefits still intact.

Absence Management

The purpose of Absence Management is to identify and recertify leave where the Employee is exceeding their approved time. Absence Management helps to reduce the amount of time that employees are away from work by parsing out the usage and identifying what is truly necessary. An illustration of FMLA Certification at a Glance is provided on the next page.

FMLA Certification Process



Wayne State University may choose the health care provided for the second opinion, except that in most cases it may not regularly contract with or otherwise regularly use the services of the health care provider. The third opinion shall be final and binding. The third health care provider must be approved jointly by WSU and the Employee.

Once identified, FMLASource requires the employee to have their health care provider recertify the leave by providing new documentation. The new documentation should confirm the previous certified time or clarify what the certified time should be. Absence management helps to reduce the amount of time that employees are away from work by parsing out the usage and identifying what is truly necessary.

When to recertify:

- Absence exceeds the approved duration
- Absences exceed the approved frequency
- Absences occur on the same day of the week 2 or more times
- Employee is exhibiting an unexplained pattern of absences
- When an employee seeks to extend an existing FMLA leave
- For long-term conditions or conditions that may require sporadic absences, a Manager/Supervisor may request recertification every 30 days in connection with an absence
- At the beginning of each leave year
- Every six months if the employee is out on a leave that has been certified to extend for more than six months

When recertification is not recommended:

- The leave has ended or is ending within 30 days
- The leave only recently began within the last 30 days
- The employee has exhausted their entitlement



How to Track Intermittent Leaves

Brett to provide Excel Spreadsheet and Lila to conform process of who does what.

Like a reduced leave schedule, only the amount of leave actually taken while on intermittent leave may be counted as FMLA leave. Therefore, if an employee needs to take off for two hours for a prenatal appointment, those two hours, and only those two hours can be counted against her 12-week entitlement. This time may include the appointment and reasonable travel time.

If you generally permit employees to make up time missed for other reasons, you should permit them to make up time taken as FMLA and not count it against their 12-week entitlement if made up.

Using the Intermittent Trend Dashboard Report

HR Consultants will assist in absence management through an Intermittent Trend Dashboard Report to identify leave patterns that could indicate potential abuse or misuse of FMLA intermittent leave. This report is generated from FMLASource and forwarded to TCW and then forwarded to HRC. The report will include all intermittent leaves for which recertification is suggested. **The HRC will compare this report to the Intermittent Leave FMLA Tracking Sheet (Excel Spreadsheet) or other tracking tool(s) provided by Managers/Supervisors. After reviewing the report, FMLASource will take specific action based on WSU's feedback. Possible actions may include flagging the employee for future scrutiny or requesting recertification with questions specifically related to the nature of the suspicion.** This level of analysis and pro-active leave management typically results in significant reduction in unplanned or inappropriate use and shorter leave durations overall.

The Intermittent Trend Dashboard Report proactively provides employees with trend on leaves that are exceeding certification parameters or are showing patterns of usage. These trends may support recertification under the regulations. The report is set up into two separate spreadsheets: 1) Exceeding Frequency and Durations and 2) Pattern of Usage. The report uses a three-month look back period to capture data.



Exceeding Frequency and/or Duration

Employees are sorted into three different categories based on intermittent leave time reporting:

1. *Activity to Watch (Blue)* These employees have exceeded their leave frequency or duration estimate by 1 time. This is the strictest standard and we do not recommend recertification based solely on this standard.
2. *Moderately Exceeding Estimate (Orange)* These employee have exceeded their leave frequency or duration estimate by 2 times. This standard is based on example set forth I the

regulations regarding recertification and level of activity “may” warrant recertification.

3. *Significantly Exceeding Estimate (Red)* These employees have exceeded their leave frequency or duration estimate by 3 or more times. This standard is based on case law, where the courts have supported recertification.



Pattern of Usage

Leaves that exhibit the following patterns will be displayed on this report.

- 1) Employee has tracked 4 or more absence on the same weekday within the past 3 months,
-OR-
- 2) Employee has tracked 6 or more total absences within the past 3 months, AND same weekday usage comprises AT LEAST 50% of total tracked days within the time period.

Occasionally a category is not displayed on the report which may indicate that there were no employee's that fell into that specific criteria.



There are several other reports available to help HRCs when counseling Employees and Managers/Supervisors. While you may not use all of them all of the time, it's good to be aware of them should you need them to resolve issues. A detailed matrix of these reports is available for your reference. The matrix includes when to use them and where to find them. **Charlene to provide updates. Do we need JA for each report?**

Returning to Work

FMLASource will provide the return date in the Employee's Decision letter following the release by the physician. TCW will send notification and request a release from treating physician along with an IME as applicable. FMLASource will send 3 reminder letters prior to the return to work. **The TCW office is responsible for calculating bank run outs and determining if Short/Long Term Disability is an option. Is this correct? Do we need to elaborate on this?**

Return to Work Notes

Return to work notes should be submitted in advanced of an employee reporting to work based on their e-class. Generally speaking, all employees are required to submit a return to work notification one (1) week prior to their scheduled return date unless otherwise noted in their contract or unit policy. Managers/Supervisors are responsible for communicating this request in advanced as part of their unit policy. The RTW note must be forwarded to FMLASource.

If the employee required work restrictions (as noted by FMLASource), HR Consultants must collaborate with the Manager/Supervisor in conjunction with Office of Equal Opportunity (OEO) to make appropriate accommodations.

Return to Work Exams

All represented employees from FP&M, AFSCME and Skilled Trades are required to undergo an Independent Medical Exam (IME) prior to returning to work. Depending on e-class, employee may be asked to contact TCW within a certain timeframe (1-2 weeks prior to their return) to set up the medical exam. When return to work note is submitted, HR Consultants must contact MedSource Services Inc. to schedule employee for exam. MedSource will need the medical condition in order to schedule exam with appropriate Doctor. The HR Consultant is responsible for contacting the employee with date and time of appointment and follow up with notification letter. When completed report is received HR Consultant will inform manager/supervisor of results. If the employee is not cleared to return to work, HR Consultants must contact Labor Relations for next steps.



Scenarios & Case Studies

Scenario 1

Scenario 2

Scenario 3

Case Study 1

Case Study 2

Case Study 3

Session Summary

Q&A

Assessment

Evaluation

Additional References

MedSource Services Inc.

Phone: 1-800-231- 5200

www.medsourceservices.com



Links of Interest

- [FMLA Fact Sheet #28](#)
- [In loco parentis](#)
- [APPM 3.4.5 Family and Medical Leave Act - WSU Policy & Procedure](#)

- [FMLA Final Rule Website](#)
- [FAQ: FMLA Final Rule](#)
- [US Department of Labor](#)
- [FMLA Employee Guide](#) (provided by DOL)
- [FMLA Military Leave Employee Guide](#) (provided by DOL)
- [FMLA Compliance Guide](#) (provided by DOL)
- [Increments of FMLA leave for intermittent or reduced schedule leave 825.205](#) (provided by ecfr)
- [Collective Bargaining Agreements](#) (Office of Provost)
 - [AAUP](#) Article XIII: Leaves of Absences
 - [GEOC](#) Article XI: Benefits
 - [UPTF](#) Article XXVI: Leave of Absence
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What tools would you find helpful to efficiently administer FMLA leaves?

- FML reports with FML hours remaining in real time
- Report of time worked over last year for eligibility questions (particularly when they have not worked enough hours to be eligible for FML)
- Scenarios of illness issues surrounding a possible FMLA approval or denial...
- Decision tree to prompt the right questions to be asked when an employee requests time off under FMLA or to determine if the absence is potentially FMLA qualifying
- Intermittent time tracking tool
- Time tracking mechanisms to code appointment vs. episodic
- Reports when employees exhausted their FMLA usage for intermittent
- FAQs/brochures to distribute to managers with tidbits on how to effectively manage FMLA usage
- Role connection hand off document
- Do we have enough content that addresses Union/Academic employees?