

# Q&A

## HR Legal Compliance

Courtesy of Brown & Brown Benefit Advisors

### Q

**Is intermittent or reduced leave permitted under the Family and Medical Leave Act (FMLA)?**

### A

Yes. Under the FMLA, employees may take leave in several ways. Continuous leave may be the most common type of FMLA leave taken by employees. In certain circumstances, however, leave can be taken intermittently or on a reduced leave schedule.

- Intermittent leave is taken in separate blocks (for example, from an hour up to several weeks), rather than continuously.
- A reduced leave schedule decreases an employee's usual number of hours per workweek or per workday (for example, a change from full-time status to part-time status).

In general, an employee may take intermittent leave or a reduced leave schedule for the birth, adoption or foster care placement of an employee's child only if the employer agrees.

Intermittent or reduced leave can also be used to care for a spouse, child or parent with a serious health condition, for the employee's own serious health condition or for a covered servicemember with a serious injury or illness if it is medically necessary and the medical need can be best accommodated through an intermittent or reduced leave schedule.

Intermittent or reduced leave can also be used because of any qualifying exigency which arises as a result of an employee's spouse, son, daughter or parent serving on covered active military duty.

If an employee needs leave intermittently or on a reduced schedule for planned medical treatment, the employee must make a reasonable effort to schedule the treatment so that it does not overly disrupt the employer's operations.

Also, if an employee takes an intermittent or reduced leave for planned medical treatment or following the birth of a child or the placement of a child for adoption or foster care, an employer may require the employee to transfer temporarily to an available alternative position. The employee must be qualified for the alternative position, the position must provide equivalent pay and benefits (though not equivalent duties) and the position must better accommodate recurring periods of leave than the employee's regular position. An employer cannot

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transfer an employee to an alternative position in order to discourage the employee from taking leave or create a hardship for the employee. For example, an employee working the day shift cannot be reassigned to the graveyard shift.

When an employee takes FMLA leave on an intermittent or reduced leave schedule basis, the employer must account for the leave using an increment no greater than the shortest period of time that the employer uses to account for use of other forms of leave. However, this period cannot be greater than one hour, and an employee's FMLA leave entitlement may not be reduced by more than the amount of leave actually taken. Nonetheless, where it is physically impossible for an employee using intermittent leave or working a reduced leave schedule to commence or end work mid-way through a shift (such as a flight attendant), the entire period that the employee is forced to be absent is designated as FMLA leave and counts against the employee's FMLA entitlement.