

Mental Health Conditions Can Trigger FMLA

In May 2022, the Wage and Hour Division of the U.S. Department of Labor released Fact Sheet #280 related to mental health conditions and the Family and Medical Leave Act (“FMLA”).

As background, among the qualifying reasons that a person may qualify for FMLA leave are:

- To care for a spouse, son, daughter, or parent who has a serious health condition; and
- Because of a serious health condition that makes the employee unable to perform the functions of his or her position.

A **serious health condition** is defined as an illness, injury, impairment, or physical or mental condition that involves (1) inpatient care in a hospital, hospice or residential medical care facility or (2) continuing treatment by a health care provider.

The fact sheet clarifies that a serious mental health condition that requires inpatient care includes an overnight stay in a hospital or other medical care facility, such as, for example, a treatment center for addiction or eating disorders.

In addition, the fact sheet notes that a serious mental health condition that requires continuing treatment by a health care provider includes:

- Conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment by a health care provider, including a psychiatrist, clinical psychologist, or clinical social worker; and
- Chronic conditions (e.g., anxiety, depression, or dissociative disorders) that cause occasional periods when an individual is incapacitated and require treatment by a health care provider at least twice a year.

In the fact sheet, examples are provided outlining situations that can trigger FMLA (or military caregiver leave):

- The employee's own serious mental health condition
- A family member's serious mental health condition
- An adult child (unable to care for him/herself) with a serious mental health condition
- A military family member's serious mental health condition

Employer Action

Employers should ensure that they comply with applicable state and federal laws, including FMLA. Additionally, employers should make sure they appropriately determine whether a particular mental health condition of an employee or dependent rises to the level of a serious health condition warranting FMLA.