

HR QUESTION ? of the month



FMLA – Does depression qualify?

Question: An employee has requested a leave due to depression. I advised her to seek medical advice and provided her with FMLA. Is depression usually considered a valid reason to be off work under the FMLA guidelines?

Response: It can be. The U.S. Department of Labor's Compliance Guide summarizes the definition of a serious health condition for FMLA purposes as follows:

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring an absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery therefrom) by, or on referral by, a health care provider for a condition that likely would result in an incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.)." See <http://www.dol.gov/whd/regs/compliance/1421.htm>.

Thus, depression may be a serious health condition under the FMLA if it meets one or more of the criteria listed above. We also wish to point out that whether or not depression qualifies as a serious health condition under the FMLA, it may qualify as a disability under the federal Americans with Disabilities Act (ADA), which may entitle the employee to time off as a reasonable accommodation. This is addressed specifically by the U.S. Equal Employment Opportunity Commission in its guidance on psychiatric conditions and the ADA which is available at <http://www.eeoc.gov/policy/docs/psych.html> and which we encourage you to review.

© 2014 Advisors Law Group, All Rights Reserved

To learn more about the [Federated Employment Practices Network®](#), contact your local [Federated Marketing Representative](#), or visit www.federatedinsurance.com.