



# Legal Compliance

Courtesy of Clarke & Company Benefits, LLC

## Q

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

## A

Under the FMLA, employees may take leave in several ways—continuous leave is just one type of FMLA leave that employees can take. In certain circumstances, leave can be taken intermittently or on a reduced-leave schedule basis.

- **Intermittent leave** is taken in separate blocks (for example, a week of leave here and there), 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 reduced leave for the birth, adoption or foster care placement of his or her 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 service member 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 for 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 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 accommodate recurring periods of leave better 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 to 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 midway 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.