

E-ALERT: Covered Employees May Use FMLA Leave for IEP Meetings



Background

The Department of Labor (DOL) released an opinion letter on August 8, 2019, to clarify that employees may take a leave of absence under the federal Family and Medical Leave Act (FMLA) to attend their child's Individualized Education Program (IEP) meetings. While DOL opinion letters are issued in response to a specific inquiry and the facts presented to them, employers can use this guidance to help navigate how to handle similar leave of absence situations.

FMLA entitles eligible employees who work for covered employers to take unpaid, job-protected leave for specified family and medical reasons. Employers covered under FMLA generally include private employers with 50 or more employees, or public or private elementary or secondary schools.

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Summary

What is an Individualized Education Program (IEP)?

The Individuals with Disabilities Education Act (IDEA) requires public schools to develop an IEP for a child who has been diagnosed with a medical condition and may need to receive educational services with input from the child's doctor, parents, teachers, and school administrators, as it relates to services such as safety, medical care, counseling, physical therapy, speech and language therapy, and more. Meetings are held to review the child's educational and medical needs and well-being to determine how the school can meet the child's needs, the results of which are then drafted into an IEP. The IEP is truly individualized for each student to improve their educational experience.

How could Individualized Education Program (IEP) meetings be covered under FMLA?

An eligible employee working for a covered employer may take up to 12 weeks of leave for their child with a "serious health condition," defined as an illness, injury, impairment, or physical or mental condition that requires inpatient care with continuing treatment from a health care provider. According to the opinion letter issued by the DOL, caring for a family member with a "serious health condition" includes "making arrangements for changes in care", including finding suitable childcare for a child with a disability, even if that care is not within a medical facility. The DOL goes on to state that the employee must attend these meetings to make medical decisions about their child, discuss their well-being and progress with health care providers, and ensure that the school environment meets their medical, social, and academic needs. Finally, the DOL clarifies that the child's doctor does not need to be present at these IEP meetings in order for the leave to qualify under FMLA. Based on these facts, the DOL determined that the employee's leave to attend IEP meetings will address their child's "serious health condition" and therefore qualifies as an FMLA-approved leave reason.

Employer Next Steps

- When deciding whether to approve an intermittent leave under FMLA for a covered employee, consider how these appointments may qualify under the law. Review the facts, including the nature of the appointment, why the appointment is needed, and who must attend. Consider if these appointments are related to the employee or covered family member's "serious health condition." If a covered employee must attend an IEP meeting for their child's "serious health condition," which has already been justified by a health care provider and they otherwise qualify for FMLA, include these IEP meetings as a covered leave reason and approve them as intermittent FMLA entitlement.
- HR Knowledge provides step-by-step FMLA Compliance Guidelines to manage FMLA leaves. Our guidelines include information on entitlement, eligibility, how FMLA defines a "serious health condition," special rules on school employees, intermittent leave, and job restoration. They also contain a detailed list on recordkeeping and a step-by-step guide on the FMLA process outlining FMLA forms and deadlines.
- HR Knowledge also provides an FMLA Tool-kit that includes sample request forms, letter templates, required FMLA documentation, return to work certification, and more. The FMLA Toolkit includes

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telephone and email support with our HR Services Team on how to best use these tools and recommended best practices on FMLA management.

- If you are a Full-Service or Virtual HR client and would like to learn more about our FMLA Compliance Guidelines or FMLA Toolkit, please [email us](#).

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