

**ASK HRK**

Dear HR Knowledge: We are evaluating our current leave of absence policies and are trying to align them with best practices, and we keep hearing the term “intermittent leave”. What exactly is intermittent leave?

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The federal Family and Medical Leave Act (FMLA), adopted almost 30 years ago, provides eligible employees with 12 weeks of unpaid job-protected leave to miss work for their own or a family member’s serious health condition, to bond with a child, or for reasons related to a family member’s military service. Only covered employers must comply with this federal statute, which include private-sector employers with 50 or more employees, public agencies, or schools.

Under the FMLA, except with respect to birth and child-bonding leave, employees may take leave continuously, intermittently, or on a reduced schedule. Now the concept of FMLA can seem straightforward; however, the administration of it, particularly as it relates to taking leave intermittently, as well as how state leave laws intersect, can be complicated.

Since FMLA intermittent leave also allows for reduced schedule leave, it may be helpful to explain how they each work in practice. Keep in mind we are referring to these as they relate to FMLA, however many state and local paid family and medical leave programs also have these carve outs.

Intermittent Leave: This is when an employee needs to take time off “here and there”, sometimes in unpredictable increments. This type of leave may also be used when an employee or their family member has a chronic condition that can flare up without warning, requiring time off from work. *For*

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example, an employee may need a certain number of hours off each week for a medical or family need, for unpredictable doctor appointments, or for physical therapy sessions for a set period of time.

Reduced Schedule Leave: This is when an employee works a reduced work schedule that is still consistent week to week. *For example, the employee normally works 8am – 5pm, Monday through Friday, but they need to attend their dependent child's weekly doctor appointments on Tuesdays and Thursdays, so they want to work Mondays, Wednesdays, and Fridays. This is a predictable reduced weekly schedule.*

Must Employers Approve Intermittent or Reduced Schedule Leave?

Under the FMLA and many state leave laws, when it is medically necessary, employees may take leave intermittently or on a reduced schedule. The key is that a health-care provider must determine it is necessary. The employee must also make a reasonable effort to schedule their time off so as not to disrupt business operations. In such cases, employers may transfer the employee temporarily to an alternative job with equivalent pay and benefits that accommodate these recurring periods of leave better than the employee's regular job.

When allowed to take leave on an intermittent basis, employees still are expected to notify their manager each time they need to take time off. Employers can require employees to call out in advance and provide the qualifying reason, as long as this is clear in their written policy and part of the procedure for all employees. Employers must be aware though, that an employee doesn't necessarily need to say the time is for FMLA, as there are no "magic words," meaning they do not specifically need to use the term "FMLA", but the employee should be providing enough information to signal whether the time off is covered under a leave statute.

How Does This Work with Leave Related to Child Bonding?

With regard to bonding leave, it is up to the employer as to whether they allow intermittent or reduced schedule leave for this purpose. While there is some discretion in how you manage these leaves, you may consider only allowing reduced schedule leave, instead of intermittent leave. Reduced schedules have predictability, which may be better for department operations. Whatever the organization's stance is regarding bonding leave, having clear written policies around these leave programs will help ensure compliance, and make for easier administration. When employers have a clear written policy to point to, it can reduce confusion in these situations.

Do Other Leave Laws, such as State Leaves, Work Similarly to the Federal FMLA?

It is important to account for other state leave laws with regard to understanding intermittent and reduced schedule leave. Many states have their own family and medical leave laws, some of which, unlike the FMLA, permit employees to use intermittent leave for birth or bonding reasons. Therefore,

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you need to be attentive to those nuances when creating a policy and administering a request for leave.

Now that we have covered the basics on intermittent and reduced schedule leave, do your policies need to be updated? If you would like further assistance, we would be happy to talk more about how we can help.

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