

Doctor's care determines your FMLA eligibility

*By Jeff Lee
Associate General Counsel*

I'm starting this article with the same advice I left you with in the last issue of the Education Focus: Any time your leave from the school district involves a medical condition, you need to ask whether this leave time is under protection of the Family Medical Leave Act (FMLA). No, not all leave exceeding three work days is protected by FMLA and this article will attempt to clarify and identify when FMLA protects certain leave.

In the November article ("FMLA 15 Years Later"), I stated your absences are covered under FMLA if your medical condition involves either, (A) inpatient care in a hospital, hospice or residential medical care facility; or (B) continuing treatment by a health care provider wherein you are unable to perform your job for a minimum of three work days due to a serious health condition.

Leave time for an employee, where the leave involves "inpatient care" in a facility described under (A) above, automatically qualifies for coverage under FMLA as a "serious health condition." Most conflicts arise between the employer and the employee when the employee is absent for three or more work days due to an illness. For example, what if a teacher is running a fever and is absent from school for one week? Is this a serious health condition under FMLA? Of course, we will assume the teacher called in to work every day and provided the proper notice under the district's policy to take sick leave each day.

Cold and Flu Scenario #1

Teacher A self-diagnosed her own illness and treated herself with the usual pain relievers and various home remedies for the entire week. Although she was "unable to perform her job for a minimum of three work days due to the medical condition," this leave will not be covered under FMLA as she was not undergoing "continuing treatment by a health care provider."

Cold and Flu Scenario # 2

Teacher B starts feeling bad over the weekend. She calls in sick on Monday and visits her general practitioner the same day. The doctor diagnoses her with the flu, orders her to stay home, and also prescribes treatment which is very similar to Teacher A's home remedies. However, due to Teacher B's medical history of being susceptible to pneumonia, the doctor requires Teacher B to report back on Wednesday so that he can further monitor her condition.

Teacher B keeps her appointment with the doctor on Wednesday and sees him again on Friday when the doctor pronounces Teacher B well and fit to return to work the next week. Teacher B's sick leave should be covered under the FMLA due to her health condition (the flu) being treated by a health care provider more than once over the course of her medical leave. If she had only been treated by the doctor "once" on the initial visit, then Teacher B's leave would not have been covered under FMLA.

How can the “flu” be covered under FMLA for Teacher B and not Teacher A? After all, each of the teachers had the same diagnosis and medical condition. Aside from advocating full employment for doctors, this scenario is to point out how the law attempts to take into account that everyone is different, and how medical conditions may be serious for some but not for others.

There are many scenarios that can appear similar, but are treated different under FMLA. If you have questions, call your district’s personnel department. If you aren’t sure your leave is being treated properly – FMLA or not – contact your OEA regional advocacy specialist.