Recognizing FMLA Abuse
What are the signs?

February 27, 2015
Red Flags

Here are some “Red Flags” that may indicate an employee is abusing approved FML:

- Absences coincide with weekends or holidays.
- More absences than the approval states.
- Activities that conflict with the approval.
- Vacation request for the same time frame was rejected.
Examples of potential abuse

Absences coincide with weekends or holidays or for specific work assignments

– Employee regularly calls in for FML leave on an assigned Saturday.
– Employee has a flare-up whenever assigned to a particular unit or post or duty.

Abuse or not?
Examples of potential abuse

More absences than the approval states

NOTE: Frequency and duration of absences are the doctor’s estimate. No one can guarantee only a specific number of flare-ups will occur or when they will occur.

– Approved absence is for episodic flare-ups 2 times per month, lasting 1 day in duration.
  • Employee calls in 4 times, two months in a row, taking 2 days each time.

Abuse or not?
Examples of potential abuse

Activities that conflict with the approval

*Important Note: Being on FMLA leave does not require the employee to be bed- or home-bound and to avoid all activity.*

- Employee is not with the family member for whom she is supposed to be caring.
- Employee posts Facebook pictures from a warm climate while on FML leave in January & February.

Abuse or not?
Examples of potential abuse

Employee’s vacation request is denied

- Employee calls in FML for the same timeframe.

Abuse or not?
Scenario Answers

In most cases the answer is – “it depends”.

We can not begin to anticipate every scenario nor provide an answer to fit every case. However, here are some general concepts to keep in mind ……
Abuse = Misconduct

• “Abuse” of leave time means there is a reason to believe that the person is using the leave for a purpose not covered by that leave.
  – It is abuse to use FML to take your car to the shop or clean your house for a Super Bowl Party.
  – It is not abuse if the medical condition actually flares up more days this month or for a longer time period than the approval notice estimates as the frequency and duration of absences.
If abuse is suspected...

Management should:

– Investigate allegations related to employee’s requests for other leave, statements about activities, or other observations
– Track FML leave to look for “patterns”
– Promptly report suspected abuse to Human Resources.

• Contact your agency HR, or
• Call the SPD FMLA line
  – @ 317-234-7955 or
  – Toll free 1-855-773-4647 (1-855-SPD-INHR)
If employee consistently takes more time off than estimated….

• Speak with employee to see if
  – circumstances have changed and recertification is necessary, or
  – employee is actually misusing FML due to a misunderstanding of what qualifies for leave.
    • If recertification seems appropriate, contact the FMLA Line, and we’ll take that action.
    • If explaining his/her misunderstanding doesn’t change employee’s behavior, then contact the FMLA Line to discuss the facts and what action might be appropriate.
Have a Question?

Call the SPD FMLA Line

• 317-234-7955

or toll free

• 1-855-SPD-INHR (1-855-773-4647)