

ALERTS

The Department of Labor Releases Guidance on Mental Health Protections Under the Family Medical Leave Act

July 7, 2022

The U.S. Department of Labor, Wage and Hour Division (“DOL”) recently released guidance on the mental health protections available under the Family Medical Leave Act (“FMLA”).

FMLA entitles eligible employees to take unpaid, job-protected leave to address certain serious health issues, including those due to mental health conditions.[1] The new guidance does not establish additional obligations for employers, but rather provides examples for employers to better understand how to comply with the law, including a fact sheet and frequently asked questions on the applicability of the FMLA to mental health.

Under FMLA, eligible employees may take up to 12 weeks of leave:

- For their own serious mental health condition that makes the employee unable to perform the essential functions of their job, or;
- To provide care for a spouse, child or parent who is unable to work or perform other regular daily activities because of a serious mental health condition.

Mental health conditions are considered serious health conditions under the FMLA if they require (1) inpatient care or (2) continuing treatment by a health care provider. A serious mental health condition that requires inpatient care includes an overnight stay in a hospital or other medical care facility. A serious mental health condition that requires continuing

treatment by a health care provider includes: (1) conditions that incapacitate an individual for more than three consecutive days and require ongoing medical treatment, either multiple appointments with a health care provider, including a psychiatrist, clinical psychologist or clinical social worker, or a single appointment and follow-up care (e.g., prescription medication, outpatient rehabilitation counseling or behavioral therapy); or (2) chronic conditions (e.g., anxiety, depression or dissociative disorders) that cause occasional periods when an individual is incapacitated and requires treatment by a health care provider at least twice a year and recurs over an extended period of time.

Common mental health conditions that may be covered under the FMLA include, but are not limited to, severe anxiety, depression, post-traumatic stress disorder and obsessive compulsive disorder.

The DOL noted that an employee who is eligible for FMLA leave may use such leave to care for a child if the child is incapable of self-care because of a disability as defined by the Americans with Disabilities Act (“ADA”), or has a serious health condition and needs care. The DOL explained that a “disability” is a mental or physical condition that substantially limits one or more major life activities, and is different than a “serious health condition” under the FMLA.[2]

Employers should understand their legal obligations in addressing mental health issues under the FMLA.

Authored by Mark E. Brossman, Ronald E. Richman, Max Garfield, Scott A. Gold, Donna K. Lazarus and Ayumi Berstein.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] Employees are eligible if they work for a covered employer for at least 12 months, have at least 1,250 hours of service for the employer during the 12 months before the leave and work at a location where the employer has at least 50 employees within 75 miles.

[2] The Connecticut Department of Labor recently issued a new notice in regards to employee’s rights to request leave for serious mental health conditions under the Connecticut Family and Medical Leave Act (“CTFMLA”). Several changes to the CTFMLA went into effect on Jan. 1,

2022, including eligibility requirements, covered family members for “care” leave and the duration of the leave.

This communication is issued by Schulte Roth & Zabel LLP for informational purposes only and does not constitute legal advice or establish an attorney-client relationship. In some jurisdictions, this publication may be considered attorney advertising. ©2022 Schulte Roth & Zabel LLP.

All rights reserved. SCHULTE ROTH & ZABEL is the registered trademark of Schulte Roth & Zabel LLP.

Related People



**Mark
Brossman**

Partner
New York



**Ronald
Richman**

Partner
New York



**Max
Garfield**

Special Counsel
New York



**Scott
Gold**

Special Counsel
New York



**Donna
Lazarus**

Partner
New York

Practices

EMPLOYMENT AND EMPLOYEE BENEFITS

Attachments

[!\[\]\(0aff635c4179ba9e710b00f4b01d3b20_img.jpg\) Download Alert](#)