

## Can Employees Take FMLA Leave For The Flu?

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With a nationwide flu epidemic in full swing, employee absences have been spiking the last several weeks. Not surprisingly, both employees and employers have been asking whether the FMLA might cover those flu-related absences. As is often the case with the law, the answer is a resounding “maybe.”

While most colds, and even the flu, do not rise to the level of seriousness required to be covered under the FMLA, at least two federal circuit courts (the 4th and 8th Circuits) have recently held that as long as the FMLA’s definition of serious health condition is met, then leave for the flu could very well be protected under the statute. In order to qualify as a “serious health condition,” the flu must result in inpatient care or involve continuing treatment by a healthcare provider. The “continuing treatment” prong can, among other ways, be met when an employee is incapacitated for at least three consecutive days followed by a regimen of prescription medication supervised by a healthcare provider.

FMLA determinations must be made on a case-by-case basis, and employers would be well-advised not to overlook this statute when dealing with flu-related absences.

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