

## EBOLA AND THE FMLA

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By now, many U.S. employers are heavily involved in preparing for workplace issues implicated by Ebola. From a benefits perspective, make sure your planning gives appropriate consideration to the Family and Medical Leave Act (FMLA).

Undoubtedly, an employee who is eligible for FMLA leave will be entitled to such leave if the employee contracts Ebola, based on having a serious health condition that requires leave from work. Similarly, an eligible employee whose covered family member contracts Ebola is likely to be entitled to leave to care for such family member (even if such “care” involves only psychological care and not physical care).

But what about the employee who is exposed or potentially exposed to Ebola, and, as a result, is requested or required – or even just volunteers, based on potential exposure – to be in quarantine? And what about employees who have not been exposed but who are fearful of contracting Ebola in the workplace and refuse to come to work?

An argument could be made that an eligible employee who is in quarantine based on exposure or a reasonable belief of potential exposure to Ebola is entitled to leave under the FMLA. This is because the definitions of “serious health condition,” “incapacity,” and “unable to perform the functions of the [employee’s] position” include situations in which an employee must be absent from work to receive “treatment.” “Treatment” in turn includes “examinations to determine if a serious health condition exists.”

Individuals who are in quarantine due to Ebola exposure or potential exposure typically are subject to monitoring by health care providers over a period of 21 days. Accordingly, such individuals arguably satisfy the requirements for being entitled to job-protected FMLA leave for the duration of their quarantine. It also should be noted that various states have enacted laws prohibiting employers from terminating employees when an official quarantine is implemented by state or federal public health officials.

As for employees who have not been exposed to Ebola but who refuse to come to work based on fears of exposure through contact with co-workers, the FMLA is less likely to be involved (although other federal and state laws, as well as other employer leave policies, could come into play). It is

conceivable, however, that an eligible employee may have a serious health condition (physical or mental) which is exacerbated by the stress or anxiety of a perceived (real or imagined) risk of exposure. Assuming such an employee is able to obtain appropriate certification from a health care provider, the employee's leave from work may be protected by the FMLA.

## MEET THE TEAM



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