

What is a “Serious Health Condition?”

OFLA/FMLA Serious Health Condition

- Inpatient care.
- Critical illness or injuries diagnosed as terminal or which pose an imminent danger of death.
- Conditions requiring “constant” or “continuing” care.
- Permanent or long-term incapacity due to condition for which treatment may not be effective, such as Alzheimer’s disease, a severe stroke, or terminal stages of a disease.
- Period of incapacity (“Absence Plus Treatment”) for more than three consecutive calendar days, which also involves: (a) two or more treatments by a health care provider or (b) one treatment followed by regimen of continuing treatment.
- Absences for pregnancy related disability.
- Absences for prenatal care.
- Absences for chronic conditions.
- Multiple treatments for conditions that if not treated would likely result in incapacity of more than three days.

ORS 659A.150 (6). OAR 839-009-0210(14), 29 CFR §825.114.

Examples of Illnesses which Generally DO NOT Qualify as “Serious Health Conditions”

- The Common Cold
- Earaches
- Routine headaches
- Routine medical or dental visits
- Plastic surgery for cosmetic purposes
- Flue
- Upset stomach
- Sore throat
- Minor ulcers
- Treatment for acne

Understanding the Definition of a Serious Health Condition

The United States Department of Labor has defined “serious health condition” in the Code of Federal Regulations, 29 C.F.R. § 825.114. A “serious health condition” entitling an employee to FMLA leave is defined as (a) an illness, (b) injury, (c) impairment, or (d) physical or mental condition that involves:

- (1) INPATIENT CARE in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e. inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from), or any subsequent treatment in connection with such inpatient care;
or
- (2) CONTINUING TREATMENT BY A HEALTH CARE PROVIDER. A “serious health condition” involving continuing treatment by a health care provider includes any one or more of the following:
 - (i) A period of incapacity (i.e. inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery there from) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - (A) Treatment two or more times by a health care provider, by a nurse or physician’s assistant under direct supervision of a health care provider or by a provider of health care services (e.g., physical therapist) under the orders of, or on referral by a health care provider;
or
 - (B) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. A regimen of continuing

treatment includes; for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health condition (e.g., oxygen). A regimen of over-the-counter medications; such as, aspirin, antihistamines, or salves; or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, **is not**, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

- (ii) Any period of incapacity due to pregnancy, or for prenatal care.
- (iii) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - (A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of health care provider;
 - (B) Continues over an extended period of time (including recurring episodes of a single underlying condition);
 - (C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
- (iv) Any period of incapacity in which is permanent or long-term due to a condition for which treatment may not be effective.
- (v) Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in the absence of medical intervention or treatment; such as, cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).

INPATIENT CARE

A serious health condition involving inpatient care means an overnight stay. Inpatient care also means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore or recovery there from.

INCAPACITY OF MORE THAN THREE CONSECUTIVE DAYS

A serious health condition involving continuing treatment by a health care provider includes; incapacity, meaning an inability to work, attends school or performs regular daily activities due to the serious health condition for a period of three consecutive calendar days.

INCAPACITY DUE TO PREGNANCY

A serious health condition involving incapacity due to pregnancy means an inability to work; attend school, or perform regular daily activities, due to pregnancy or prenatal care.

This leave qualifies for FMLA leave even though the employee or the immediate family does not receive treatment from a health care provider during the absences, and even if the absence does not last more than three consecutive days. For example, an employee who is pregnant may be unable to report to work because of severe morning sickness.

CHRONIC SERIOUS HEALTH CONDITION

A chronic serious health condition is one which:

- (A) Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of health care provider;
- (B) Continues over an extended period of time (including recurring episodes of a single underlying condition);
- (C) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

This leave qualifies for FMLA leave even though the employee or the immediate family does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive days. For

example, an employee with asthma may be unable to report to work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when pollen count exceeds a certain level.

PERMANENT OR LONG-TERM MEDICAL CONDITION

A period of incapacity which is permanent or long-term due to a condition, for which treatment may not be effective, is a serious health condition. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by a health care provider. Examples include Alzheimer's, severe stroke, or the terminal stages of a disease.

MULTIPLE TREATMENTS FOR RESTORATIVE SURGERY OR OTHER POTENTIALLY SERIOUS CONDITION

Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity for more than three consecutive calendar days in absence of medical intervention or treatment; such as, cancer (chemotherapy, radiation treatment, etc.), severe arthritis (physical therapy), kidney disease (dialysis) qualifies as "serious health condition."

SUBSTANCE ABUSE TREATMENT

Substance abuse may be a serious health condition if the conditions set forth in the definition for "serious health condition" are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or a provider of health care services on referral of a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

CIRCUMSTANCES WHERE AN EMPLOYEE WITH A SERIOUS HEALTH CONDITION WILL BE DEEMED UNABLE TO PERFORM HIS/HER JOB FUNCTIONS UNDER THE FMLA

An employee is "unable to perform the functions of the position" where the health care provider finds that the employee is unable to work at all or is unable to perform one of the essential functions of the employee's position (within the meaning of ADA 42 U.S.C. § 12101 et seq. and regulation 29 C.F.R. § 1630.2(n)). "Essential functions" means the fundamental job duties of the employment position the employee holds. Further, a job function may be considered essential because (1) the reason the position exists is to perform that function; (2) the limited number of employees available to distribute the performance of the job; and/or (3) the function may be highly specialized such that the employee holding the position was hired for his or her expertise or ability to perform the particular function. Likewise, evidence of whether a particular function is essential includes, but is not limited to: (1) the employer's judgment; (2) written job descriptions; essential functions of the employee's position are to be determined with reference to the position the employee held at the time notice is given or leave is commenced, whichever is earlier.

An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment. An employer has the option, in requiring certifications of a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review.