

Are Employees Eligible for FMLA Leave When A Natural Disaster Strikes?

By [Jeff Nowak](#) on May 23, 2011



Natural disasters like the kind we recently have witnessed in the flood-ravaged areas of the southern United States raise a host of issues for employers. Some wonder whether they are required to pay their employees during suspended operations; others are unsure whether and to what extent health benefits should be offered. But what about an employer's obligation to provide a leave of absence to employees during a natural disaster under laws such as the Family and Medical Leave Act? We cover below some of the more common FMLA-related issues employers face after natural disasters, such as a tornado, hurricane or flood, hit.

An Employee's Right to Take FMLA Leave after a Natural Disaster

The FMLA does not, in itself, require employers to give employees time off to attend to personal matters arising out of a natural disaster, such as cleaning a flood-damaged basement, salvaging belongings, or searching for missing relatives. (See [our recent post](#) where a court dismissed an employee's FMLA claim where the employee sought leave to clean up his mom's basement after a flood.) However, employers clearly have the right to voluntarily provide leave in these situations pursuant to their personnel policies.

That being said, an employee would qualify for FMLA leave when, as a result of a natural disaster, the employee suffers a physical or mental illness or injury that meets the definition of a "serious health condition" and renders them unable to perform their job, or the employee is required to care for a spouse, child or parent with a serious health condition who is affected by the natural disaster. Here are some examples:

- A natural disaster causes an employee's chronic condition (such as stress, anxiety or soaring blood pressure) to flare up, rendering them unable to perform their job. Where the medical certification supports the need for leave as a result of the natural disaster, FMLA leave is in play.
- An employee is required to care for a family member with a serious health condition for a reason connected with the natural disaster. Take, for instance, an employee's parent who suffers from diabetes. If the event took out power to the parent's home, the employee may need to help administer the parent's medication, which must be refrigerated. Similarly, the employee may need to assist a family member when his/her medical equipment is not operating because of a power outage.

Could a Natural Disaster Cause a Serious Health Condition That Implicates the FMLA?

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In addition to those reasons above, employees who are physically or emotionally injured as the result of a natural disaster also may be entitled to FMLA leave. Moreover, their impairments may be significant enough to rise to the level of disability, resulting in potential employer obligations under the Americans the Disabilities Act (ADA). These medical conditions may arise several weeks and months after the natural disaster hits. Thus, employers should be vigilant in watching for signs of an employee who is unusually scarred by a natural disaster.

Take, for example, [post-traumatic stress disorder](#). A condition often associated with military servicemembers returning from active duty, PTSD also can arise out of a [natural disaster](#). In this situation, an employer would not only be required to consider its FMLA obligations for such an employee, but its ADA obligations as well. Here, the employer may need to provide FMLA leave if the employee is unable to perform their job duties as a result of a serious health condition. It also may be required to provide reasonable accommodations for the employee, such as the option to telecommute or work from home, or provide leave to attend counseling or receive treatment for the medical condition. (See our [comprehensive summary](#) (pdf) of the ADA Amendments Act, which will affect these situations.)

Insights for Employers

Our prayers go out to our fellow Americans affected by the recent spring tornadoes and flooding. As the media already has reported, employers in the south continue to do their part to assist their employees with personal tragedies arising out of this life-changing event.

In the time ahead, employers must familiarize themselves with employment issues arising out of the natural disaster that may impact their business operations *and* implement appropriate procedures that will adequately protect themselves against liability in the future. Where an employee is requesting leave as a result of the natural disaster, employers should obtain as much information as possible from the employee to determine whether the absence qualifies as protected leave. Where there is doubt, employers should provide the requisite FMLA paperwork and allow the employee to provide the necessary information to support FMLA leave. (A previous [FMLA podcast](#) of ours covers how an employer should respond to a request for FMLA leave. It might be helpful here.)

Also, employers should ensure that [medical certification](#) is sufficient to cover the absence at issue. Where more information is required, employers must follow up with an employee to obtain the information necessary to designate the absence as FMLA leave. Moreover, when an employer has reason to doubt the reasons for FMLA leave, they have the right to seek a [second opinion](#) to ensure FMLA leave is appropriate.

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