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Breathe Easy: Asthma and FMLA

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Approximately 12-15 million people in the US (approximately 5%) have asthma, and 15% of those may have job-related factors that may exacerbate the condition. Given asthma's prevalence, it stands to reason that some of your employees may request FMLA leaves related to this medical condition.

Employers should be able to respond to FMLA leave requests for asthma confidently and efficiently. The confidence results from taking a realistic approach to the status the FMLA legislation allots asthma, both in principle and in particular. The efficiency results from understanding the medical characteristics of the disease. For example, understanding that anxiety increases the risk of an attack may help you respond in ways that minimize the leave requests and/or lost work time.

Employers must answer a key question about whether or not asthma constitutes a "serious health condition" in order to make legally-sound FMLA leave determinations. From the outset, it will be helpful to dispel a misunderstanding that has affected more than one employer.

The misunderstanding stems from the FMLA requirement that an individual must be receiving "continuing treatment" as criteria for establishing the serious health condition. The FMLA regulation offers five definitions for "continuing treatment." Employers often focus on the first definition when making FMLA leave determinations, but for asthma patients, it is the third definition that is relevant. According to the first definition, if the individual seeking leave is treated on an outpatient basis, the individual must experience a state of incapacity of more than three days. According to the third definition, continuing treatment applies to "any period of incapacity or treatment for such incapacity due to a chronic serious health condition... [including one which] may cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.)" (29 CFR 825.800 – Definitions).

On occasion, employers may have mistakenly assumed that asthma-related leave requests should be declined because they fail to meet the requirement of a period of incapacity of more than three consecutive calendar days. As the third definition states in principle and in particular, the episodic nature of asthma

cannot in and of itself disqualify the individual from obtaining approval for FMLA leave.

In fact, it is specifically the episodic nature of some medical conditions that qualifies the leave for FMLA approval. Not all, but many cases of asthma involve all three of these criteria: (1) periodic visits for treatment, (2) an extended period of occurrence (asthma most frequently begins before the age of 25, and the prognosis is quite variable), and (3) episodic periods of incapacity.

Beyond ensuring that the asthma case meets the FMLA legal requirements, the employer must also make sure that the Certification of Health Care Provider is current and states that the individual suffers from a "chronic serious health condition." This documentation provides the employer assurance that the episodic nature of the leave requests and the chronic nature of the employee's medical condition have been certified by a trained professional.

The letter of the law, on which this discussion has focused, points to the spirit of the law: to provide needed time off from work for the needs of one's health (or of one's family members) so that the individual can recover without the added burden of worry that his or her job may be jeopardized.

Continuing in the spirit of the law, the employer should understand the diagnosis, treatment, and work restrictions for a person with asthma. A source of general medical information geared specifically to employers and employees is *The Medical Disability: Workplace Guidelines for Disability Duration,* Fourth Edition (MDA). According to the MDA, asthma shares the following symptoms and characteristics.

Asthma is an acute or chronic lung disease in which airflow in and out of the lungs may be blocked by bronchial muscle squeezing and swelling, and excess mucus. It is characterized by episodes of obstructed breathing, which occur due to narrowing of the breathing passages, making it difficult to inhale but even more difficult to exhale. With mild asthma, the airways are relatively normal between attacks. In more severe asthma, there is some degree of constant airway constriction, with additional narrowing that occurs during an acute attack.

Individuals with asthma may respond to certain factors (triggers) in the environment, which do not affect non-asthmatics. In response to a trigger, an asthmatic's airways become narrowed and inflamed, resulting in wheezing and/or coughing.

Asthma symptoms can be triggered by several factors including allergens or irritants, viral or sinus infections, stomach acid flowing back up the esophagus (reflux disease), medications or foods, emotional anxiety, and exercise. Allergic rhinitis (hay fever) is considered a risk factor in developing allergic asthma; up to 78% of individuals with allergic asthma also have allergic rhinitis. Symptoms of asthma and allergic rhinitis can be triggered by seasonal or year-round allergens

- any substance that triggers allergies. These can include airborne pollens and molds, animal dander (dead skin flakes), house dust mite and cockroach droppings, and indoor molds.

Occupational asthma is generally defined as a respiratory disorder directly related to inhaling fumes, gases, dust, enzymes, metals, animal proteins, fungi, pollens, pharmaceutical agents, or other potentially harmful substances while "on the job." With occupational asthma, symptoms of asthma may develop for the first time in a previously healthy worker, or pre-existing asthma may be aggravated by exposures within the work place. Occupational asthma has become the most prevalent work-related lung disease in developed countries. However, the exact proportion of newly diagnosed cases of asthma in adults due to occupational exposure is unknown.

Asthma attacks are typically episodic. Intervals between attacks can be days, months, or years; for some people asthma can become a daily problem. The symptoms of asthma vary, and are related to the severity of airway obstruction. Common symptoms during attacks include wheezing, coughing, chest tightness, and shortness of breath. They may only be able to speak in 1-2 word sentences. If severe airway obstruction interferes with the delivery of oxygen to the brain, individuals can become restless and confused; these symptoms are often worse at night, disturbing sleep. Exercise may precipitate asthma. Between attacks, symptoms are absent or greatly reduced. The individual will typically have a history of previous asthmatic attacks. Any information about events preceding an attack can be useful to determine a possible trigger for the asthma, but in some cases of very reactive airways, it can be difficult to isolate the cause(s).

Symptoms of occupational asthma include wheezing, chest tightness, and cough. Other associated symptoms may include runny nose, nasal congestion, and eye irritation. The cause may be allergic or non-allergic in nature, and the disease may persist for a lengthy period in some workers, even if they have discontinued exposure to the irritants that triggered their symptoms. Commonly, symptoms worsen through the work week, improve on the weekend, and recur when the worker returns to the job.

Acute asthma is treated with bronchodilator inhalants and oxygen. Intravenous (IV) muscle relaxants and steroids may also be needed. If the attack is severe and prolonged, the individual will be admitted to the hospital for intensive treatment because respiratory failure can be a serious possible development. Inpatient treatment might require a positive-pressure oxygen mask or mechanical intermittent ventilation (respirator). Treatment of chronic asthma includes inhaled bronchodilators (sympathomimetics and parasympatholytics), anti-inflammatory medications (inhaled or systemic steroids, inhaled cromolyns, and leukotriene modifiers), theophyllines, and decreased exposure to causative agents.

Several medications are useful in treating persons with frequent and/or severe asthma attacks. These include antihistamines, which relieve or prevent the

symptoms of allergic rhinitis (hay fever) and other allergies. Decongestants are used to treat nasal congestion and other symptoms by shrinking blood vessels, thereby decreasing the amount of fluid that leaks out and reducing nasal congestion. Anti-inflammatory agents such as the nonsteroidal cromolyn and corticosteroids reduce asthma symptoms. Many of the cells that cause airway inflammation are known to produce potent chemicals within the body called leukotrienes. Leukotrienes are responsible for the contraction of the smooth muscles of the airway, for increasing fluid leakage from blood vessels in the lung, and promoting inflammation by attracting other inflammatory cells into the airways. Recently, oral anti-leukotriene medications have been introduced to fight the inflammatory response; they are also used to treat chronic asthma. Bronchodilators are generally used as asthma "rescue medications" to relieve coughing, wheezing, shortness of breath, and difficulty in breathing.

Aggressive treatment of pulmonary infections is recommended, along with immunization against influenza and pneumococcal pneumonia.

The outcome in asthma is quite variable. Nearly 20% of individuals with asthma have some limitation in their daily lives due to the disease. A mild asthmatic attack may be treated easily with an extra dose of inhaled bronchodilator. A severe asthmatic attack developing over weeks might lead to severe, prolonged asthma, hospitalization, and multiple complications. If the individual's airways remain chronically inflamed, permanent disability may be seen.

Work restrictions may help prevent future episodes of asthma. Avoiding fumes, gases, dusts, extreme temperatures, and any other airway irritants known to trigger an attack is essential. Masks and/or respirators should be used when required. When asthma is triggered by exercise or exertion, the individual may need to be reassigned to less strenuous duties and given the opportunity to use preventive medication.

It is to everyone’s advantage to keep these key points in mind, thereby accepting (and hopefully minimizing) the role of asthma in an employee’s work life:

- asthma qualifies for FMLA leave because it is a chronic, episodic illness
- a worker may request the leave for his or her own condition or for supporting family members (often children) suffering from an episode
- each case (but not each episode) must be examined by a health care practitioner and certified accordingly
- if there are ongoing doubts about an employee’s condition, the employer may seek re-certification, although that is generally not required for asthma
- asthma attacks may be seasonal or may occur year round

- the attacks may require simple, brief treatment, or complex, extended treatment

- asthma attacks may be triggered by environmental factors (even after some of those factors have been eliminated), including pollens, pollutants, and even stress

Severity of the asthma attack, development of complications, whether episodes are acute or part of a chronic condition, any underlying chronic medical conditions, and the individual's type of work are the factors most likely to influence disability duration. Overall, the chronic, well-managed, mild to moderately severe asthmatic may experience very few lost work days due to the disease.

Dr. Presley Reed is Chairman of Reed Group, an international firm that provides FMLA, absence, and disability management services to employers. Dr. Reed is also Editor-in-Chief of *The Medical Disability Advisor: Workplace Guidelines for Disability Duration* (MDA). The MDA guidelines are in active use by more than 10,000 multi-national employers, insurance carriers, and health care professionals across the US and in 22 other countries. Reed Group solutions include the MDA guidelines books and software, absence/FMLA management software, data analysis services, consulting, education/training, and full-service outsourced absence management services. Additional information about the firm can be found at www.rgl.net. You may also contact Dr. Reed at (800) 347-7443.