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## Intermittent FMLA can be a real headache

by Presley Reed, M.D.

Individuals who suffer from migraine headaches can present challenges in the administration of family and medical leave. On one hand, migraine headaches can be incredibly debilitating. As such, a migraine can clearly meet the FMLA definition of "serious health condition." Consequently, an employee diagnosed with migraines will have a legitimate need for intermittent leave, often on short notice. On the other hand, non-migraine headaches may be reported as migraines when employees request an absence protected under the FMLA. Because of the nature of the condition, the employer may at times be led to approve intermittent leave when in actuality the leave does not qualify as FMLA leave.

Objective findings for the diagnosis of migraine headache are not always clearly understood or documented. What, then, are the criteria for granting FMLA leave to employees who may be suffering from migraine headaches? While only a medical practitioner can offer a diagnosis for a specific individual, the characteristics of a migraine are defined in this article to provide a frame of reference for FMLA administrators to better differentiate between migraines and ordinary headaches. In addition, it can outline a pattern that indicates possible employee abuse of the FMLA.

### What is a migraine?

The following descriptive information on migraine headaches is excerpted from the Fourth Edition of *The Medical Disability Advisor* (Reed, 2001) to provide background on the seriousness of this health condition, as well as possible misdiagnosis. The general definition sufficiently attests to its debilitating nature:

Migraine is a type of headache characterized by narrowing (constriction) of blood vessels in the brain followed by painful dilation and inflammation of the same blood vessels. It is described as a "sick headache," not only because there may be nausea and vomiting, but also because the individual typically feels completely disabled throughout the duration of the headache.

The pain is moderate to severe, throbbing or pulsating, and usually localized to one side of the head. Migraines can last from hours to days and may also be associated with sensitivity to light and sound. The headaches can be preceded by an aura or warning symptoms related to the blood vessel narrowing and may include visual disturbances, limb numbness, tingling, or hyperactivity.

Symptoms reported on diagnosis further remind us of the severity of the condition. Individuals may report symptoms associated with the headache such as nausea, vomiting, pale skin, feeling faint, or sensitivity to light (photophobia) and sound (sonophobia). Duration, location, pulsating quality, intensity, presence of aura, and frequency of headaches should be noted.

Visual symptoms account for more than half of symptoms that may be associated with the aura, including bright spots resembling stars, sparks, geometric patterns, or lightning bolts (fortification spectra). When the bright spots disappear, blind spots or decreased vision may follow.

Other symptoms associated with the aura may include numbness, especially of the hand and lower face. Weakness, clumsiness, or speech disturbances are less common. The aura usually lasts about 30 minutes and is followed by a brief period of normalcy before the headache begins.

### Problems with FMLA tracking of migraines

Not only are these symptoms intense and clearly debilitating, they are also primarily reported by the patient, which is one reason migraines pose a problem for FMLA tracking. It is the testimony of the patient that is pivotal in the determination of a headache being migraine.

Unfortunately, physical examination and laboratory test results may not provide much additional evidence. If there has been a history of “recent head or neck trauma and muscle spasms,” the physical exam can help establish diagnosis and direct treatment.

Similarly, “neurological examination [which] includes evaluation of brain and nerve function, sensory discrimination, reflexes, strength, coordination, and cognitive abilities” may confirm the presence of a migraine. But the main role of the physical exam and the tests is to uncover co-existing medical conditions.

Treatments exist, and they are often effective, but not without side effects:

Once the headache is underway, treatment usually requires a vasoconstrictor such as an ergot alkaloid to stop the attack. These medications are most helpful if given during the aura. A new type of vasoconstrictor is available, and pain relief may begin within a few minutes of taking it by mouth or injection.

If nausea and vomiting occur, medication may have to be administered under the tongue, by injection, or rectally. Migraine attacks that are severe, prolonged, or unresponsive to self-administered medications may have to be treated in the doctor’s office or emergency room.

Depending on the treatment and the patient’s response, symptoms may not be relieved and it may not be possible to continue working until the side effects subside.

Although the condition is debilitating and unpredictable, it is not without a hopeful prognosis:

Occasionally migraine headaches may spontaneously disappear especially as individuals reach middle age. Self-care is very important, and the migraine sufferer can increase the chance of successful outcome by taking medications as directed by the doctor and modifying lifestyle factors such as diet, exercise, avoidance of migraine triggers, stress control, and proper rest. Any changes in headache frequency or severity should be communicated to the doctor and adjustments in treatment made to improve outcome.

## **Diagnoses**

In addition to being good medical advice, these changes in frequency and severity need to be reported to help keep the FMLA tracking clear.

When reported to the physician and to the absence manager, these indicators allow for two possibilities—either a decrease or an increase in migraines for the individual. They can also alert the physician to differential diagnoses, which may, on the positive side, find that the headache is “a tension-type, sinus headache, cluster headache, chronic daily headache, [or a] rebound headache.”

Such headaches are not necessarily debilitating and could allow the employee to continue at work, in a modified state if necessary (“providing a dark, quiet room where the individual can rest until the attack passes may be helpful”). Such indicators can also alert the physician to more serious problems, such as “brain tumors, aneurysms, or other structural causes of headache” which are, however, “relatively rare.”

The complications of migraines may lead into a shadowy land where the initial condition gives rise to secondary conditions whose symptoms mimic those of migraines and make diagnosis less straightforward:

Migraine sufferers are more prone to develop tension-type headaches that result in mixed headache syndrome. Excessive use of painkillers may cause rebound headaches when the drug’s effects wear off, and episodic headaches may be transformed into chronic daily headaches.

Thus the frequency of migraines may appear to increase when, in fact, the episodes have not. This problem can become intentionally or unintentionally an occasion for the employee to request FMLA time when a more accurate diagnosis or a deliberate return to work would address the situation more accurately.

## **HR and the migraine sufferer**

The person responsible for administering family and medical leave is placed in a difficult situation when an employee with migraine headaches frequently requests time off. If the attending physician has diagnosed and documented the presence of migraines, the request must be taken at face value as legitimate and, indeed, needed.

However, if the requests begin to follow a pattern that suggests a lifestyle issue, that pattern warrants a new medical examination. Migraine headaches, like other maladies, are calendar-blind. They may occur on any day of the week, and are likely to be distributed fairly evenly across the calendar.

When the headaches regularly occur on Mondays and/or Fridays, they may be symptomatic of other workplace concerns, not necessarily medically based. In the event of suspected performance problems, it may be important for FMLA administrators to share observations and findings about the frequency and patterns of absence with HR or Benefits staff without disclosing confidential medical information.

The correct response, if a pattern emerges, is to gather updated medical information on the individual in the form of periodic medical recertifications (as frequently as every 30 days).

If the information and the practitioner providing it betray no suspicions concerning the pattern, the employer should continue to grant the employee's requests for leave. If, however, the medical opinion does not align with the pattern, the person managing the absence should take steps to curtail the approvals.

The first step is to make sure all decisions are documented.

The second step is to notify the individual that the medical examiner does not support the incidence of migraines being reported. An independent medical examination (IME) may be in order. Often the review process itself—the request for an IME and the scrutiny of information provided—will make it clear whether the employee's driving need is indeed medically based.

If these steps do not interrupt—or justify—the pattern, the next step is to bring the case before a human resources professional or panel to further investigate the wellbeing of the employee. Having done so, the absence manager may rest assured that he or she has done everything possible to comply with the FMLA and, if warranted, additional intervention or disciplinary action can be appropriately addressed within the construct of the company's established policies and procedures.

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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](http://www.rgl.net). You may also contact Dr. Reed at (800) 347-7443.

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