Planning for a Medical or Mental Health Emergency

This fact sheet answers:

- Why Should I Plan for a Medical or Mental Health Emergency?
- Do I Have a Right to Take Leave Under the Family Medical Leave Act (FMLA) Or Americans With Disabilities Act (ADA)?
- And More
Why Should I Plan for a Medical or Mental Health Emergency?
The following example happens too often: Someone with a disability has a sudden health crisis related to their disability. They go to the hospital. During their hospitalization, they cannot make any phone calls, so they have no way to tell their employer that they will not be at work. After getting out of the hospital, they go back to work and find out that they were fired.

This Fact Sheet helps you get ready so if you ever experience such an emergency, you will have a plan in place to try to protect your job.

How Can an Employee With a Disability Be Fired?
There are laws that help people with disabilities, including the Americans with Disabilities Act (ADA) and the Illinois Human Rights Act (IHRA). Even with these laws, your employer can insist on knowing when you will be gone from work and the reason why.

How Do I Prepare for a Medical or Mental Health Emergency?
Follow this three-step process:

Step 1: Choose a “spokesperson” – a friend, family member or colleague who will talk to your employer if you cannot when you have an emergency.

Step 2: Make a Worksheet for your spokesperson so they know how to contact your employer and what information to share. Use the sample at the end of this Fact Sheet.

Step 3: Tell your spokesperson how to respond if your employer asks for medical documentation.

Who Should I Choose as My Spokesperson (Step 1)?
The best spokesperson is someone who will know that you are having a crisis and unable to call or write your employer. The spokesperson should know this without you having to tell them. This can be a family member, roommate, or someone who you talk to daily.

Who Should My Spokesperson Contact (Step 2a)?
Your spokesperson should contact your boss or the human resources department. They can contact whoever you are the most comfortable with.

Make sure your spokesperson has contact information for everyone they should call.

Use the Worksheet at the end of this Fact Sheet.
What Should My Spokesperson Tell My Employer (Step 2b)?

1. Explain that you are unable to be at work due to a medical/mental health issue.

2. Say they are letting your employer know right away, but you will contact them soon (give a time frame, if known).

3. Ask your employer to treat this immediate time as sick leave under any policies or legal requirements, like FMLA or ADA.

How Should My Spokesperson Contact My Employer (Step 2c)?
Your spokesperson should tell your employer in writing by email to make a clear record of your request. This also helps your employer know that your request should be taken seriously.

If your spokesperson wants to talk in person or by phone first, that is fine. Your spokesperson should just be sure to follow-up in writing by email confirming the conversation.

What Should My Spokesperson Expect as a Response (Step 3)?
If you are eligible for FMLA leave, your spokesperson might get FMLA forms for your doctor to complete (Follow-up on these as soon as you can).

If you are eligible for leave as a reasonable accommodation under the ADA, your spokesperson may be asked for medical documents to confirm you have a disability and need leave.

Your spokesperson should tell your employer that they will help get the forms to you or your medical team.

Can I Take Leave Under the Family Medical Leave Act (FMLA) Or Americans With Disabilities Act (ADA)?
Maybe. See CAP’s “Interplay Between the ADA and FMLA” and “Taking Time Off Under the ADA” fact sheets to learn more.

Can I Ask for Medical Leave if I Haven’t Told My Employer That I Have a Disability?
Yes. The basic rule is that you do not need to tell your employer about your disability unless and until you need a reasonable accommodation (such as medical leave). See CAP’s “Disclosing Your Disability” fact sheet to learn more.
| **Complete before your emergency**  
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<th>(For you to complete)</th>
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| **My spokesperson is:**  
| - Name  
| - Phone  
| - Email  
| - Relationship |
| **My spokesperson should contact the following person from my job:**  
| - Name  
| - Phone  
| - Email  
| - Role (Supervisor or HR) |
| **My spokesperson can use the following letter:**  
| (Change words as needed)  
| **Dear Supervisor/HR:**  
| I am reaching out on behalf of (your name) to let you know that (employee name) is unable to come to work due to (general description of medical/mental health emergency).  
| I am reaching out to give you immediate notice, but (name of employee) will be in contact shortly (add time frame, if known).  
| I am also requesting that this immediate time period be treated as sick leave under your employer policies or any other legally required leave, like FMLA or the ADA.  
| Please let me know if you need any additional information at this time.  
| Name (spokesperson’s contact information) |
| **My spokesperson has permission to explain:** |
| **My spokesperson does not have permission to explain:** |
### Complete before your emergency
(For you to complete)

If my employer needs medical documentation, my spokesperson should try to work with my doctor (yes/no/how)

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If yes, how:

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### Complete during your emergency
(For your spokesperson to complete)

Date of contact with employer:

Name/contact information of work contact:

Method of communication (phone/email): *Remember, you should always follow-up with the request in writing.*

Summary of initial communication: *Save any written documentation, including emails.*

Summary of employer’s response: *Save any written documentation, including emails.*

Did employer ask for medical information? If yes, summary of response: *Save any written documentation, including emails.*
What Happens if I Get Fired During or After the Emergency?
If you have been wrongfully fired because of your disability and/or the medical or mental health emergency, you can pursue a claim of employment discrimination against your employer. Unlike other types of cases, you cannot (with some exceptions) go directly to court. Your first step is to file a charge of discrimination against your employer.

You can file a charge with the Equal Employment Opportunity Commission (EEOC) or with the Illinois Department of Human Rights (IDHR). You have 300 days from the date of learning of the adverse action (such as firing) to file with the EEOC and the IDHR.

See CAP’s “How to File a Charge of Discrimination” fact sheet to learn more.