

To: Damien Leonard, Legislative Counsel  
From: Tucker Anderson, Law Clerk  
Date: April 18, 2017  
Re: “Serious Health Condition” in FMLA and PFLA

### **FMLA and Federal Definition of “Serious Health Condition”**

- FMLA defines “serious health condition” as an illness, injury, impairment, or physical or mental condition that involves:
  - inpatient care in a hospital, hospice, or residential medical care facility; or
  - continuing treatment by a health care provider. 29 U.S.C. § 2611(11).
- Federal regulations further define “serious health condition” to include any period of incapacity:
  - connected with inpatient care in a hospital, hospice, or residential care facility; 29 C.F.R. §825.114
  - requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by a health care provider; 29 C.F.R. § 825.115
  - due to pregnancy, or for prenatal care; 29 C.F.R. §825.115(a)(5)(b)
  - due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
  - that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer’s, stroke, terminal diseases, etc.); or 29 C.F.R. §825.115(a)(5)(c)
  - including any absences to receive multiple treatments for a condition that likely would result in incapacity of more than three consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.). 29 C.F.R. §825.115(a)(5)(e)
- In balancing what constitutes a “serious health condition” federal regulations advise:
  - Conditions for which cosmetic treatments are administered are not serious health conditions unless inpatient hospital care is required or unless complications develop. 29 C.F.R. §825.113(d).
  - Unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, are examples of conditions that do not constitute a serious health condition. 29 C.F.R. §825.113(d).
  - Mental illness or allergies may be serious health conditions, but only if conditions are met.
  - Substance abuse may be a serious health condition if certain conditions are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or on referral by a health care provider.
- An employee is covered by FMLA if the employee has to miss work to attend appointments to determine if a serious health condition exists. 29 C.F.R. § 825.114(b).

### **PFLA and Vermont’s Definition of “Serious Illness”**

- Vermont’s Parental and Family Leave Act defines “serious illness” as an accident, disease, or physical or mental condition that:
  - poses imminent danger of death;
  - requires inpatient care in a hospital; or
  - requires continuing in-home care under the direction of a physician. 21 V.S.A. § 471(5).