

The Family Medical Leave Knowledge Gap Can Be Costly



Recently, we briefly explained the [various Employment Practices Liability exposures](#) facing businesses, then delved deeper into [social media with this piece](#). Today, we take on the [Family Medical Leave Act](#) (FMLA) which "entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave."

In these cases the employee filed for, were, or had been out on leave under the Family Medical Leave Act. In all cases motions to dismiss were at least initially thrown out, resulting in increased legal cost by the employers even if they ultimately won the case.

1. While an employee was out on FMLA leave a manager revealed confidential and embarrassing medical information about him, resulting in ridicule, obscene gestures and jokes at the employees' expense upon his return. - *Holtrey v. Collier Cty. Brd. Of Cty. Commissioners*
2. During a discussion about her keeping up with her workload following FMLA leave a manager asked, "So are you planning on being out anytime soon again?" Soon after she was fired for performance and subsequently filed a FMLA suit claiming his comment was clearly in reference to her recent FMLA leave. Despite clear evidence of her underperformance the case was cleared to go to a jury. - *Marshall v. The Rawlings Co.*
3. A miner injured his neck, causing chronic pain which resulted in several operations and multiple absences under FMLA. He was pressured to change shifts which would have resulted in lower pay until the company HR department stepped in. He received poor performance reviews and was denied a promotion due to his absences. When he committed a safety violation he was fired, however, he subsequently won an FMLA suit with a nearly \$1.5 million judgement. - *Smothers v. Solvay Chem., Inc.*
4. An employee's manager sent an email to HR listing the many valid reasons justifying her firing. Also include was a statement that her firing "was justified because she 'submits a request for medical leave.'" Despite the pile of evidence supporting her dismissal, that comment was enough to allow her FMLA suit to go forward. - *Stewart v. Wells Fargo*
5. On a Friday a Director of Human Resources had an intense conversation with the company CEO in which he claimed she quit, while she contends she was only considering quitting. In a series of emails over the weekend she expressed a desire to file for leave under FMLA. The CEO eventually insisted she had resigned on Friday, but the emails did not support him. She won her case including liquidated damages and attorney fees and cost. - *Lamonaca v. Tread Corp.*
6. An engineer took 2.5 months leave under FMLA and subsequently received a lower performance review which included that she had "has missed time due to an injury." She was also transferred to another position where she performed well. In 2015 the company had a reduction in force in which two managers rigged the ranking scores to make her the one laid off. Judgement was in her favor for \$619,000. - *Walker v. Verizon Pennsylvania LLC*

Here are the [most common mistakes](#) employers make regarding FMLA which can result in added expense to correct, a fine, or a lawsuit. Here is a [list of suggestions](#) to avoid such mistakes including most of the cases above. In the end training company executives, managers and supervisors in what the Family Medical Leave Act is and how requests should be handled will go a long way towards avoiding a costly lawsuit. Some states, such as [California](#) as well as [Washington D.C.](#) are now offering their own version of FMLA in which some or all of the leave is paid. This means another layer of rules and regulations of which management needs to be aware to avoid a violation and the potential consequences.

Coverage for these claims, and their high cost of defense, is usually available through the **Employment Practices**



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