

# Warn bosses: Do nothing that discourages FMLA leave or punishes those who take it

FMLA leave is a legal entitlement that's guaranteed to employees who have worked for their covered employers for at least one year and 1,250 hours in the past year, and have a covered need.

Discouraging employees from taking FMLA leave or punishing those who take it can lead to at least two legal claims: interfering with FMLA leave and retaliation.

Supervisors need regular reminders—reinforced with training—that it's their responsibility to find ways to deal with it when workers go on FMLA leave, no matter how difficult it may be to cover for the absent employee. As the following case shows, courts have no sympathy for employers that fire or make unreasonable demands on employees who exercise their FMLA rights.

**Recent case:** Khaliq Drew worked for Plaza Construction Corp. setting up and repairing computers. When he learned that his father had developed leukemia and was hospitalized, he asked HR for several hours off to go to the hospital. The HR office told him to check with his supervisor.

That's when the trouble began. Drew said his boss asked him why his father needed so much attention and added that his absence meant "you're killing us." However, the supervisor did give Drew permission to take time off.

But when Drew returned the next morning, an e-mail was waiting for him. His boss had instructed him to work late that evening to make up for the lost time.

Drew stayed late, but his boss accused him of not doing so. He sent another e-mail that said, "Please make sure you stay late tonight to catch up the items on your list. I thought this was understood. Please don't make me ask you again."

Drew again asked for [a few hours of FMLA leave](#). This time, he was fired by day's end, for alleged insubordination. When Drew asked how he had been insubordinate, he was not provided a reason.

He sued, alleging both FMLA interference and retaliation.

Plaza Construction tried to get the case dismissed, but the court ordered a trial. It reasoned that interference with FMLA rights includes "discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise FMLA rights." The court said that includes conduct like forcing Drew to make up the time and firing him. (*Drew v. Plaza Construction*, No. 09-Civ-2129, SD NY, 2010)

**Final note:** You can't force employees to make up the time they use for FMLA purposes. Instead, come up with contingency plans that allow operations to continue smoothly even if employees are off work. Remember, FMLA leave is an entitlement. If you make employees work additional hours, they aren't getting time off the way

Congress intended.

Plus, employees would be discouraged from taking FMLA leave if they knew they would have to make up the time later. That's why the law makes it illegal to discourage taking FMLA leave.