

# Plan for work pile-up following FMLA leave

In today's economic climate, you might be tempted to forgo hiring a temp to fill in for an employee who's out on FMLA leave. Especially if you initially believe the employee won't be gone long, what's the harm?

But what will you do if the employee returns to a huge pile of work left undone during her absence?

Think twice before you tell her to catch up or else. If she has to stay late to make up the work, that could lead to a slew of legal claims: FMLA interference, FMLA retaliation and [overtime claims](#) under the Fair Labor Standards Act (FLSA).

**Recent case:** Sharlene Kollstedt was a payroll supervisor for a school district. One of her jobs was to handle benefits administration tasks. Kollstedt was off work for about eight weeks of FMLA leave due to stress she claimed was brought on by a failed attempt to earn a promotion.

When she returned, she found that no one had completed any of her work during her absence. She was informed it was up to her to get caught up.

After working late and on weekends for several weeks, Kollstedt got a poor performance appraisal and was terminated. She sued, alleging FMLA violations—plus an overtime claim under the FLSA. The school district claimed she was exempt under the administrative exemption.

The court ordered a trial on her FMLA and her FLSA claims. The school district will now have to defend against the FMLA claims and show that Kollstedt's responsibilities really did justify the administrative exemption. (*Kollstedt v. Princeton City School Board of Education*, No. 1:08-CV-00822, SD OH, 2010)

**Final note:** If an employee will miss crucial work due to FMLA leave, get help. And don't ever use deadlines missed during FMLA leave as a negative element in a subsequent evaluation.