

Don't bury FMLA leave taker in catch-up work

In today's economic climate, you may be tempted to forgo hiring a temp to fill in for an employee who's out on FMLA leave.

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 you punish employees for failing to complete their post-FMLA backlog of 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 an Ohio school district. One of her jobs was to handle benefits administration tasks.

Kollstedt took about eight weeks of FMLA leave due to stress that, she claimed, was brought on by a failed attempt to earn a promotion.

When Kollstedt 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.

She worked late and on weekends for several weeks to catch up, but she still received a poor performance appraisal and was terminated.

She sued, alleging FMLA violations—plus an overtime claim under the FLSA.

The court ordered a trial on both the FMLA and FLSA claims. The school district will now have to go to trial 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 tip: If an employee will miss crucial work due to FMLA leave, get help. Realize that the "catch up or you're fired" tactic will be seen as illegal interference with the FMLA.

Also, don't ever use deadlines missed during FMLA leave as a negative element in a subsequent evaluation.

Who covers for FMLA absences?

Percentage of HR people who say their organizations often handle the workload of an employee on FMLA leave by:

Assigning work temporarily to co-workers	88%
Hiring temporary replacements	23%
Allowing some work to go undone	10%
Having employee work at home on leave	4%

