

# Offer reinstatement if you make FMLA mistake

The FMLA is a complicated law that can trip up even the most experienced HR professional. And sometimes it may not be apparent that an employee didn't get the leave he was entitled to until after his lawsuit is in full swing.

Fortunately, there's still something you can do to cut the potential liability.

Employers that offer the wronged employee a chance to return to work with no strings attached won't have to pay future lost-pay claims, even if the employee turns down the offer.

Just make sure the offer is sincere and truly unconditional. That is, the offer must be for the same or an equivalent job with the same pay and benefits.

**Recent case:** German Carrasco took FMLA leave on several occasions over the years he worked for GA Telesis. But he also had attendance problems that earned him warnings.

He then had surgery for a hernia and went out on FMLA leave. His boss called and asked him to return as soon as possible. Carrasco claimed he worked out an informal [intermittent leave](#) plan with his supervisor: He would work as many hours as he could, but not a complete schedule. Nothing was in writing.

A few weeks later, GA Telesis fired Carrasco because he was coming in late. He sued, alleging that the company failed to honor the intermittent leave agreement and never provided the proper FMLA forms.

A year into the litigation, the company offered him his job back on a probationary basis, with benefits kicking in after 90 days. Carrasco rejected the offer and continued the lawsuit.

When GA Telesis protested, the court said the company could still be liable because its reinstatement offer wasn't unconditional. (*Carrasco v. GA Telesis*, No. 09-23339, SD FL, 2010)