

Rewrite policy to prevent moonlighting during FMLA leave

Issue: Unless your policy prevents it, employees can work a second job while out on medical-related FMLA leave.

Risk: Reduced productivity as employees "work" the system.

Action: To prevent this, set a policy that bans employees from moonlighting during any kind of leave.

It seems crazy that your employees can use their allotted 12 weeks of annual job-protected leave under the Family and Medical Leave Act (FMLA) to take on a second job. But it's allowed under current law. As long as employees have a legitimate excuse for FMLA leave, they can use their leave any way they please.

Can you do anything about it? Thankfully, yes.

As the following case shows, if you have a uniform company policy that prohibits employees from moonlighting during any kind of leave, you can also ban employees from working during FMLA leave. The key point: You must apply this rule consistently. Ban moonlighting during all types of leave, not just FMLA leave.

In a recent case, an auto technician took FMLA leave to care for his newborn baby and to help manage his wife's restaurant. The company fired him and a court upheld the firing, pointing to the company's established policy that prohibited workers from outside employment while on any kind of leave. (Pharakhone v. Nissan North America Inc., No. 01-5955, 6th Cir., 2003)

Bottom line: Having a "no-moonlighting-on-leave" policy doesn't mean you have to ban moonlighting for all employees at all times. In fact, we suggest that your policy stop short of banning moonlighting for active employees. Rather, it should help you limit moonlighting's negative effects.

Free Reports:

- How to Write a Moonlighting Policy: Tips on writing a policy, plus two sample policies.
- How to Wipe Out Fraud and Abuse Under FMLA: 11 steps to eliminating fraud by employees inclined to "work" the system.

For a free copy of either report, visit our Extra! site at www.hrspecialist.net/extra.