

How to avoid the FMLA 'no-fire' zone: Prorate performance goals to account for FMLA leave

Sometimes employees will suddenly request FMLA leave when they know they face termination because they're not meeting their performance goals. They think no one can be fired while on FMLA leave. Wrong!

You can fire such a worker—as long as you first make performance goal adjustments that take their FMLA leave into account.

Recent case: Delois Harris sold health plans to small employers over the phone. Her sales were lower than many other employees. As a result, Harris was placed on a performance improvement plan (PIP) that required her to complete at least 111 sales by the end of May 2010.

By Friday, May 28 she had made just 98 sales. That day, she felt ill and went to her doctor. Then she requested FMLA leave for alleged medical problems.

Her request was granted. Still, at the end of May she was terminated for not hitting her sales goals.

She sued, alleging interference with her right to take FMLA leave. She argued that she should have been allowed additional time to hit her sales target once she returned.

The court disagreed. Instead, it said the proper approach would be to prorate her goal to account for FMLA leave time she used. By its calculation, that meant that Harris would had to have made 110 sales before taking FMLA leave. Since she had just 98, the court dismissed her case. (*Harris v. HIP*, No. 10-61137, SD FL, 2011)