

After merger, must we hire worker who's on FMLA?

Q. We bought a company and agreed to consider hiring the seller's employees. We interviewed and hired some of them. One of the employees was out on FMLA leave and is telling us that we have to hire him. We looked at his work record and we would never hire him. Do we have a potential problem?—R.L.B.

A. You may well have a problem. The FMLA guarantees employees an unpaid leave of up to 12 weeks in a year. You will have to determine how much of his leave he had already used before you purchased the company. If the former employee had not used all of his FMLA leave, the issue is whether a purchaser has to honor the FMLA leave rights of employees of the seller. The U.S. Labor Department takes the position that a "successor" employer must honor the FMLA leave rights of employees of a seller, and the courts are following the department's lead on this issue.

Tip: Make sure that both your organization and the seller are employers covered by the FMLA and that the employee is seeking to come back before his leave time has run out.