

FMLA: All managers can face personal liability for leave mistakes

If you're looking for incentives to get managers and supervisors to pay attention during FMLA training sessions, look no further. Simply point out that they can be held *personally* liable if they deny FMLA benefits to which an employee is entitled.

Only certain federal laws carry the prospect of personal liability, and both the FMLA and the Fair Labor Standards Act fall into that category. Those laws permit employees to sue individuals, including their bosses and HR directors. To complicate matters, some state laws say supervisors can be held personally liable for on-the-job discrimination.

Personal liability means a person's assets (including a house, car and savings) are fair game for the other side's lawyers. It doesn't matter whether you work for a private or a public employer, as the following case shows.

Case in point: Carolyn Modica, an inspector for Texas Cosmetology Commission, took time off after hurting her knee. Modica sent an email to the agency executive director asking if the FMLA covered her leave. She received no response. Instead, the supervisor terminated her when she couldn't return to work by a set date.

Modica sued the agency director personally, alleging the director got rid of her in retaliation for asking about FMLA leave. The director claimed government employees couldn't be sued personally for FMLA violations.

Not so, said the 5th Circuit Court of Appeals, which ruled that any supervisors or managers who deny employees their FMLA rights can be sued personally. (*Modica v. Taylor*, No. 05-50075, 5th Cir.)

Final tip: Just as they document employees' performance, managers would be wise to document their own decision-making processes. If you give advice to others and are ignored, document what you recommended. Your notes may end up being your best defense from personal liability.