

# You can force an eligible employee to take FMLA leave

FMLA provides up to 12 weeks' unpaid leave to eligible employees for their own or a relative's serious health condition. Employers can run FMLA leave concurrent with other paid leave if they choose, which has the effect of running out the clock. Otherwise, employees could exhaust sick and other paid leave and still get additional time off as FMLA leave.

But what if the employee has a serious health condition and doesn't want to use up her FMLA time just yet? Can you force her to take FMLA leave? You can, as the following case shows.

**Recent case:** Elizabeth Nichols found herself in a high-risk pregnancy, and her doctors ordered her to avoid dust, especially from toner. Because she worked in an area with a sealed ventilation system, her employer told her there was no way it could guarantee her safety. Instead, the company placed her on FMLA leave, which she didn't want. She wanted another employment position away from dust.

She gave birth and returned to work as soon as her doctor cleared her. Then she needed more time off for a hysterectomy. But since she had used up all her FMLA leave, she was given a choice between losing her job and reapplying or delaying surgery until she had accumulated enough hours to become eligible again. She chose to delay surgery, but sued, arguing that having been forced to take FMLA leave earlier meant she wasn't eligible now.

The 11th Circuit Court of Appeals tossed out her case. It reasoned the employer had acted well within the law. After all, it gave her FMLA leave when she couldn't work in the office. (*Nichols v. CSG Systems*, No. 07-10196, 11th Cir., 2007)