

# When can you fire someone on FMLA leave?

FMLA leave is generally regarded as an entitlement. That is, an eligible employee receives up to 12 weeks job-protected leave for a covered reason whether the employer likes it or not.

But that doesn't mean that the employee can never be fired while on leave—as long as you would have done so even if she hadn't taken FMLA leave. Just make sure you document the reason and that you can show that FMLA leave had nothing to do with the discharge. Otherwise, you're risking a retaliation or FMLA interference claim.

**Recent case:** Rae worked at a hospital, but had a history of not getting along with patients and co-workers. In fact, she was suspended after an argument with a supervisor.

When Rae developed breast cancer, she requested FMLA leave, which her supervisor approved. While on leave, Rae brought her husband and grandchildren to the hospital, ostensibly to show off the children and check her mailbox.

A co-worker later reported feeling threatened by the husband. HR investigated and learned from co-workers that Rae had allegedly threatened that her husband had a hit list with some of her co-workers' names on it.

The hospital ran a background check on the husband and discovered that he had been convicted of disorderly conduct for threatening alleged trespassers and telling the police he had a loaded rifle he was ready to use on trespassers.

Rae was then fired. She sued, claiming the hospital interfered with her right to FMLA leave.

The court disagreed. It said her discharge was unrelated to her FMLA leave and that the hospital had proved it would have fired her whether she was on leave or not. (*Ketchum v. St. Cloud Hospital*, No. 12-2893, DC MN, 2014)