

When an Employee's FMLA Leave Expires, Can You Say Goodbye?



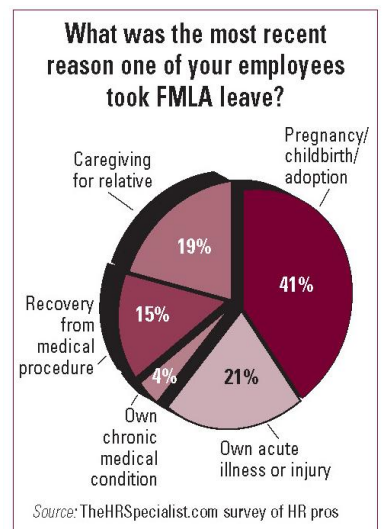
Few issues churn up as much HR confusion and frustration as the FMLA. The acronym officially stands for the Family and Medical Leave Act, but HR professionals who have seen employees abuse this 20-year-old inalienable right, know it more as the "Friday-Monday Leave Act."

That's why organizations are typically more than happy to quickly pull the termination trigger right after employees reach their legally allotted 12 weeks of FMLA leave in a year.

Not smart.

Some employees aren't quite medically ready to return after their 12-week allotment is up. Those who need a finite amount of additional time off may be legally entitled to more leave as a "reasonable accommodation" that's required under the Americans with Disabilities Act (ADA).

How you handle such requests for extra time can make the difference between an appreciative employee and a messy lawsuit. Quick-trigger firings after FMLA leave have led to an increasing amount of ADA claims.



Advice: Have a clear HR process for handling requests for leave after FMLA runs out. To decide if you must

grant additional leave as an ADA accommodation, first determine whether the person's condition [qualifies as a disability under the ADA](#).

Then see if the employee's certification includes a return date. That's because unlimited leave is not considered a "reasonable" accommodation.

Finally, consider whether it's reasonable to allow more time off based on your operational needs and the employee's condition. For those who aren't disabled but simply not yet fully recovered, you could deny such requests.

But if you deny some requests and approve others, be careful that you aren't singling out employees based on illegal factors like gender. Example: Rejecting new mothers' extension requests but approving those unrelated to pregnancy may be discrimination.

Consider this recent case from [TheHRSpecialist.com](#): Natausha, an investigator for a Texas county, requested FMLA leave after she suffered a stillbirth. After the leave, she returned to work as scheduled. Shortly after, she got pregnant again. She took FMLA leave, which began before she gave birth. When her leave was set to expire, she requested more time off. The county denied her request. She was replaced.

Natausha sued, alleging she had been denied additional leave when others sometimes received more time off. But she never claimed she was disabled. Nor did she have any details about the other employees who allegedly received more favorable treatment. Her case was dismissed. ([Johnson v. Dallas County](#), No. 3:12-CV-1461, ND TX, 2014)

Pregnancy and the FMLA: Answers to 3 Key Questions

1. Are you obligated to accommodate an employee who cannot, because of her pregnancy, perform her usual assignments?

A. That depends on the type of accommodation you usually make for other employees who are unable to perform their usual jobs. For example, if you provide other work for an employee who can't lift because of a bad back, you must make similar arrangements for a pregnant employee.

2. Can you bar a woman from returning to work for a predetermined period after she gives birth?

A. No. You cannot have a rule, for instance, that a woman must wait a month following childbirth before returning to work.

3. Must you keep the job of a pregnant employee open until she is ready to return to work following the birth of her child?

A. Generally, yes. Unless you are informed that she will not return to work, you must keep the job open on the same basis as jobs that are held open for employees on sick leave or disability leave for other reasons.

Online resource Find answers to 17 more legal questions relating to pregnancy leave and health insurance, abortion policies and more by going to www.theHRSpecialist.com/pregnant20.