

# Is early termination OK when employee who is on FMLA submits her resignation?

**Q. An employee who is off on an approved FMLA leave just submitted her resignation, providing two weeks' notice. Our employee handbook asks employees to provide a two-week notice when possible. May we terminate the employee's employment immediately rather than wait two weeks?**

**A.** Probably yes, but with caution. The FMLA regulations allow employers to terminate the leave immediately when the employee unequivocally communicates that he or she has no intention of returning to work.

Before you act, carefully examine your past termination practices. When employees who are not on FMLA or another legally protected leave give notice of resignation, does your company generally terminate those employees early? If not, you may be at risk for a potential discrimination lawsuit.

Although the risk of legal action may be lessened by the FMLA regulations, it is advisable to consult with an attorney if your practices appear inconsistent. And certainly, the course of action with the least amount of risk would be to just wait the two weeks.

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*Susan K. Fitzke and Sarah J. Gorajski are shareholders, advising clients out of Littler Mendelson's Minneapolis office. Contact them at (612) 630-1000 or send email to Susan at [sfitzke@littler.com](mailto:sfitzke@littler.com) and Sarah at [sgorajski@littler.com](mailto:sgorajski@littler.com).*