

# FMLA Covers Overnight Hospital Stay, But What Counts as 'Overnight'?



One definition of a “serious health condition” that would qualify an employee for FMLA leave is “any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital.”

But what counts as an overnight stay? Must the person arrive before midnight? Stay until sunrise? Read on ...

**Case in Point:** Jeffrey, who worked for a tool manufacturer, had a history of heart problems. One day he was having chest pains at work. He asked his boss if he could go to the hospital. Request granted.

Jeffrey arrived at the hospital before midnight and stayed for about 14 hours. He was released with good news. But he missed work the next day and was fired for “walking off the job.”

Jeffrey filed a lawsuit claiming his FMLA rights were violated. The company defended itself by arguing Jeffrey wasn’t legally protected by the FMLA. Reason: While he arrived at the hospital before midnight, he wasn’t admitted until just after midnight. This meant Jeffrey did not have an “overnight” hospital stay and, thus, he didn’t have a “serious” qualifying health condition.

**The result:** A lower court sided with Jeffrey, saying he was entitled to FMLA protection because an overnight stay meant “sunset to sunrise.”

But the appeals court rejected that standard, saying the “calendar” day is a better bright line approach. It said an overnight stay means, “a stay in a hospital ...for a substantial period of time from one calendar day to the next calendar day measured by the individual’s time of admission and his or her time of discharge.”

So what’s considered a substantial period of time? The court said it would leave that discussion “for another day.” (*Bonkowski v. Oberg Indus., Inc.*, 3d Cir.)

## 3 lessons learned ... without going to court

**1. The FMLA still isn’t clear.** The judge’s remarks about saving an FMLA decision “for another day” means more lack of clarity for all of us.

**2. Don’t try this on your own.** Even if the law is technically on your side, firing an employee who just got out of the hospital is very risky business—especially without legal counsel.

**3. Check your employee handbook.** Make sure your FMLA policy is up to date with the Department of Labor regulations. While you're at it, make sure your [certification and notification forms](#) are current, too.