

# Is employee in jail entitled to FMLA leave?

**Q. We have an employee who is on final warning due to his poor attendance. We have a points-based attendance system, so one more occurrence will result in termination. The employee recently requested FMLA leave to care for his wife. While on FMLA leave, it was reported in the newspaper that the employee was arrested for drug possession. He was in jail for several days, including several workdays. The employee is now out of jail and wants to return to work. Can we treat the employee's absences from work while in jail as occurrences under our attendance policy, or do we have to treat the time as FMLA leave, even though the employee could not have been caring for his wife the days in question since he was in jail?**

**A.** If your employee was not caring for his wife, he was not entitled to FMLA leave for those days. The days he was incarcerated can indeed be treated as "occurrences" under the attendance policy you describe.

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