

# Employee goes dark after FMLA leave expires--when can we terminate?

**Q: “If an employee was on FMLA leave and has exhausted the 12 weeks, but has not made contact with the company (to state that they are desiring to come back to work, or to request an extension of the leave), and their phone numbers and email are no longer in service, how long is the company required to wait before termination of employment?” - *Martin, Minnesota***

**A:** Your question serves as a good reminder to all employees that it is important to stay in touch with your employer while on leave. Unfortunately, there is no “correct” answer to your question, but here are some things to consider.

First, if the employee was on leave to care for another person, and has not responded to your attempts to reach him, then you may be comfortable moving more quickly to terminate than if the employee is on leave to care for his or her own serious health condition. If you believe the employee may be disabled, for example, then additional leave may be a reasonable accommodation under the Americans with Disabilities Act or a similar state disability discrimination prevention law. I would advise sending a letter by certified mail, at a minimum, to document your efforts to reach the employee before terminating the employment.

The same answer applies if you are willing to allow someone additional leave, but must move to fill the position held by the employee. After all, if you terminate someone and it turns out that they are disabled and need more time on leave, it’s relatively easy to reinstate them on your books, but it is more difficult, if not impossible, to place them or return them to work if you have filled the role they held before going out on leave.

After you’ve considered all these angles, I’d say you can terminate the employment as soon as you are confident that you’ve made reasonable efforts to locate the employee, to no avail.