

# No guarantee of same job after FMLA leave

Managing the workload while an employee is out on FMLA leave for the full 12 weeks can be difficult. As a practical matter, now that we are near full employment, there may not be many temporary workers available to fill the gap. You may have to promote someone from within to do the work of the employee who has taken FMLA leave.

But what about the employee who took FMLA leave? Isn't he entitled to return to his old job? Not necessarily, as long as you can place him in an "equivalent" job with the same benefits and pay. There is no absolute right to return to the exact same job as before.

**Recent case:** Gary was senior director of operations for national intelligence programs at Sotera Defense Solutions, a major defense contracting firm. His was a key position that involved preparing the company to bid on a federal contract to develop military software. The contract was potentially worth billions of dollars.

Gary fell off his roof and injured his hand, necessitating FMLA leave so he could have surgery and recover.

Sotera placed another employee in his position. Executives told Gary he would be able to return to an equivalent position when he was cleared to come back to work.

Soon, he did return and was placed in a job with the same pay and duties similar to what he had been doing before he was injured. However, it involved work on a different federal defense contract.

Shortly after Gary returned, Sotera underwent a reduction in force because Congress had cut defense spending. Gary was terminated, but the employee who replaced him was retained.

Gary sued, alleging he should have been reinstated to his old job. Therefore, he argued, he never should have been laid off.

The 4th Circuit Court of Appeals rejected that argument. As long as the job Gary returned to was equivalent, the employer had met its obligation. (*Waag v. Sotera Defense Solutions*, 4th Cir., 2017)

**Final note:** An employee who takes FMLA leave is entitled to be restored to the same position or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment. The law does not specify what qualifies as "terms and conditions of employment."