

Are we allowed to contact an employee who is out on FMLA leave?

Q. Is it OK to contact an employee during FMLA leave or ask him or her to come in to the office?

A. Although the FMLA does not establish clear boundaries for contact between employers and employees while employees are on FMLA leave, employers must be careful about doing so. Depending on the content and extent of the communications, these actions can expose employers to wage-and-hour lawsuits, FMLA interference claims and even FMLA retaliation claims.

Under the FMLA, employers are prohibited from interfering with an employee's exercise of his or her FMLA rights. In part, this means employers cannot require employees on FMLA leave to work.

This does not mean employers are absolutely prohibited from contacting employees about work-related matters. A few short phone calls to pass on or request information or updates likely do not amount to interference. However, employers should not ask employees to perform any work while on leave.

Asking employees on FMLA leave to come in to the office is problematic because it is more burdensome and more likely to be interpreted as work than a short phone call would be.