# Managing FMLA leave: Posting FMLA notice helps cut off lawsuits

Workers have just two years to file a lawsuit over alleged FMLA violations unless they can prove their employer willfully violated the law. If they can, they get another year to sue.

Employers that post appropriate FMLA notices alerting workers to their FMLA rights—and train managers on the FMLA—generally get the benefit of the shorter deadline.

**Recent case:** Rosario worked for a cleaning service. More than two years after being fired for poor attendance, but less than three years, she sued, alleging FMLA violations.

The employer asked the court to toss out the case, noting that it had posted an FMLA rights notice by the timeclock and trained managers on workers' FMLA rights. The court agreed. The poster and training were strong evidence that the employer hadn't willfully violated the law. (*Mejia v. Roma Cleaning, et al.*, 2nd Cir., 2018)

## Employee doesn't return after FMLA runs out? OK to fire for violating attendance policy

An employee who takes FMLA leave to care for a parent is entitled to reinstatement to the same or an equivalent position when the leave entitlement expires.

But if for some reason he doesn't return to work at the end of his FMLA entitlement, then the employer is free to enforce a no-show, voluntary-quit rule based on the absences.

**Recent case:** Ramzi worked for a bank. He took FMLA leave to care for his ailing father.

When his 12-week eligibility was almost up, he asked his employer for five more weeks of FMLA leave. His employer told him no more FMLA leave was available beyond his 12 weeks. He was told he had to return to work or he would be considered to have abandoned his job. When he didn't return, he was discharged.

Then Ramzi sued, alleging that the bank had retaliated against him for taking FMLA leave.

The court tossed out the case. It reasoned that since Ramzi couldn't point to any other employees whose FMLA leave was extended, he couldn't demonstrate he was treated differently because of a protected characteristic.

Plus, it reasoned that the bank had a legitimate business reason for termination—namely that he had abandoned his job. (*Yaghi v. Pioneer Bank*, No. ND NY, 2018)

**Warning:** If the extension request is on account of the worker's own serious health condition, and he qualifies as disabled under the ADA, more leave may be required as a reasonable accommodation. Consult your attorney if you encounter this scenario.



7600 Leesburg Pike, Suite 300, Falls Church, VA 22043-2004 (800) 543-2002

# Never bring up relative’s disability when discussing reasons for absenteeism

Here’s something to cover when training supervisors who work in New York City: Warn them against mentioning possible reasons for absenteeism when disciplining workers for missing work. It can badly misfire, especially if the reason for missed work is taking care of a disabled relative.

*Reason:* The New York City Human Rights Law makes it illegal for an employer to discharge an employee because of his or her association with a disabled individual.

**Recent case:** Jeneba worked for United Cerebral Palsy of New York City as a residence program specialist. Her son became disabled after he was the victim of a brutal assault and hate crime. The injuries led to chronic seizures, and Jeneba had to miss work as a result.

At first, she was approved to take FMLA leave for the absences. Then, she claimed, her supervisor began to deny her requests. She was eventually discharged for alleged insubordination.

However, internal communications and Jeneba’s later testimony showed that her supervisor had complained about her absences and suggested she get someone else to care for her son.

Jeneba sued, alleging denial of FMLA leave and associational discrimination under the NYCHRL.

The court said both claims could move forward, even though her termination for insubordination wasn’t illegal. The court noted that FMLA leave is an entitlement and that there was enough evidence that the supervisor, by commenting on her care for her son, punished her for her association with a disabled individual. (*Labedo v. UCP*, SD NY, 2018)


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