

What can you not do while on FMLA leave? Top things to look out for.

What are employees unable to do while on FMLA? That's a tricky question, but we're here to give you a solid answer. Scroll down to learn more about your FMLA rights.

In this BusinessManagementDaily article, you'll learn all about:

- What can you not do while on FMLA
- Tips for employees and employers going through the FMLA process
- Employee rights: How to prevent FMLA abuse from the employee *and* the employer standpoint

Here's a list of actions you can't or shouldn't take while trying to be protected under FMLA.

You Can't:

✓ **Take longer than 12 weeks of leave**

Be careful about how much leave is taken. Employees who take longer than the permitted 12 weeks of unpaid leave will no longer be protected under FMLA. This is federal law we are talking about here, so there won't be much wiggle room on subjects like the amount of time taken.

✓ **Abuse FMLA for personal time**

Employees shouldn't try to abuse their unpaid leave, and on top of that, good management and HR will have ways of knowing whether or not the employee is taking their leave time correctly.

This means that employees can't use your leave to create long weekends, doing so repeatedly may be grounds for investigating suspected abuse.

Employers do have options for keeping employees honest while they are taking unpaid FMLA leave.

Time metering

A good human resources department will make sure FMLA time is accurately logged and recorded.

Ensure that time is properly recorded while employees are on medical leave. If an employee is using intermittent FMLA leave, then also be certain that they're using proper time-keeping methods like clocking in and out and submitting any leave slips necessary.

Disciplinary actions

Employers can take disciplinary action for employees who are abusing FMLA leave. However, be cautious when doing so as you don't want to create cause for a retaliation case.

Private investigator

In drastic circumstances, employers might even hire a private investigator to find out when exactly an employee is doing with their leave time. Getting a private investigator involved would only be necessary if a lawsuit or termination was under consideration. This is, however, a legally viable option.

✓ You can't use FMLA to file a 'bunk' lawsuit

Certain employees will always do whatever they can to take advantage of their employer. That means employees may look for opportunities to use FMLA as a case for a lawsuit. However, typically lawsuits with little to no standing will be thrown out in court. For example, employees fired for legitimate wrongful doing while on FMLA leave may file a suit claiming they're protected because of FMLA leave.

However, this is not true — if while an employee is on FMLA leave, you discover that they were not fulfilling their job duties, lying about their time, or engaging on other normally fireable offenses, you need not wait until they return from leave to terminate them.



The image shows a 'MEDICAL LEAVE REQUEST' form on a wooden desk. The form is filled out with handwritten information. A large red 'APPROVED' stamp is stamped across the form. A pen and a calculator are also visible on the desk.

Employee Information		Home Telephone
Name (Last)	Public	112-385
Address (Mailing Address)	123 New Street	(Home) 112-385
E-Mail Address	NA	(Work) 112-385
Dates Requested	July 3 - July 10	
Education (GED) Test Passed?	Yes No	
Credits Earned	Graduate	
Other (Specify)	Yes	

✓ You can't take sick leave without legitimate medical issues

To take FMLA leave, the employee or the family member they're caring for *must* be recovering from or receiving some kind of medical treatment. This isn't an excuse to take 12 weeks of unpaid vacation per year. The certification process will typically weed out false claims.

✓Request FMLA leave without notice

An employer can most certainly deny an employee's leave if they don't give enough notice. Employees should give their management/HR at least 30 calendar days' notice before they take their leave. However, employers may wish to make exceptions, and in some cases must if the need for leave was unforeseeable.

For example, say an employee planned their knee replacement surgery months out, but only requested leave 20 days beforehand. You may require the full 30-day notice before allowing an employee to take leave.

However, if an employee is involved in a car accident they may need to take leave immediately and under the FMLA this would be a valid reason for needing to do so without normal notice.

✓ **Take leave if you are a key employee**

Unfortunately, key employees are unable to take FMLA leave if the employer determines that there would be a substantial loss on account of the key employee taking time off from work. That means you could decline an employee's leave if they are a member of management or have a mandatory position that must always be filled. However, generally, this isn't an advisable course of action to take, especially if an employee needs a serious medical procedure or is very ill.

✓ **You can't travel — in some cases**

Employers might take disciplinary action against employees who seem to be abusing their leave. For example, if Joe had a contagious disease and was showing up in places like the beach on their social media, a member of the management may not be too happy about that.

On the other hand, if Jane needed to take medical leave because of severe depression and needed some time to relax and recover, that may be a time when traveling is acceptable for taking medical leave. Likewise, an employee recovering from knee surgery shouldn't be seen posting pictures of a hike on social media, but recovering on a beach seems much more reasonable.

Another example of an acceptable time for a worker to travel during their leave would be if they were going to another country to adopt or foster a child.

What is FMLA? Here's a quick reminder

The Family And Medical Leave Act is a law that protects employees of larger companies who want to take medical leave from work.

Under FMLA, employees are entitled to 12 weeks of unpaid leave per calendar year for medical conditions or to help an immediate family member deal with a serious medical condition.

An employee may want to take FMLA leave for one of the following reasons:

- Birth of a child/bonding with a new child
- Foster care
- Caring for a disabled service member

FMLA eligibility depends both on the employer and the employee.

A company must have 50 or more employees that work within 75 miles of the company to be protected under the medical leave act.

Employees must have logged over 1250 hours of work(airline employees have different rules), and they must also have worked for the company for the last 12 months.

When does FMLA reset?

This varies based on how a company manages its FMLA Calendar year, this must be chosen by the company in advance for all employees. Otherwise, you'll have to choose the most favorable method for each employee on a case-by-case basis.

The four FMLA calendaring methods are:

- The calendar year.
- Any fixed 12-month “leave year,” such as a fiscal year, a year required by state law, or a year starting on an employee’s “anniversary” date.
- The 12-month period is measured forward from the date any employee’s first FMLA leave begins.
- A “rolling” 12-month period measured backward from the date an employee uses any FMLA leave.

Legal advice?

Our best advice for both employers and employees handling the FMLA process is to record every little detail.

For example, if the employee sits down with the human resources department to map out an intermittent leave plan to cope with chronic migraines, the agreement should be put in writing.

It's even a good idea to pull the voice recorder out on your phone to record conversations had about an employee's FMLA circumstances--just to stay in the clear if conflicts arise over what was agreed upon.

What are employees entitled to upon reinstatement?

FMLA is designed to protect employee's jobs. So what does an employee have rights to when returning to work?

- An equivalent job
- The same health benefits/health insurance
- The same working hours
- The same pay
- The same work responsibilities

Employees can file complaints through the US Department Of Labor's Wage And Hour Division

Employees have the right to file a complaint if they feel their rights are violated during their leave time.

If an employee thinks that the employer is impeding on their rights to take medical leave, all they need to do is contact the wage and hour division who is in charge of reinforcing FMLA.

Consulting a law firm is most likely not necessary for employees experiencing problems taking unpaid leave from work.

See the [FAQ section](#) on DOL's website

Click the link above to read some common questions people have about FMLA leave.

You will also want to read the [Employee's Guide To The Family And Medical Leave Act](#).

Employees: Take leave time responsibly

The best way to avoid problems when taking FMLA leave is by doing it responsibly.

Here are some ways employers and employees can make sure the FMLA process goes as smoothly as possible:

- Accurately record and track schedules for intermittent leave
- Ensure paperwork is properly filled out and documented/saved
- Communicate impeccably to eliminate any and all confusion
- Employers should require proper medical certification from employees yearly

Employers: Train HR *and* sufficiently

Human resources and employees should be sufficiently trained on the FMLA process long before anyone needs to take leave.

We should also note that employers are obligated to display an FMLA poster somewhere in the work area to educate employees about their FMLA rights.

Employers who fail to display an FMLA poster in their work area are subject to a fine.

Additional resource: Read more about [FMLA requirements](#) and what they mean for your business.