

# Can an employee be terminated while on medical leave?



Most employment contracts have an at-will clause meaning you can terminate a position at any time for any legal reason. However, one situation that often comes with a cloud of confusion is whether an employee can be terminated while on medical leave.

Medical leave-related termination is a sensitive situation because employees on medical leave receive protection by numerous laws at the federal and state level that you have to consider. But that doesn't mean you can't fire an employee because they're on leave. You do, however, have to ensure you follow the laws, which depend on several factors.

## **Import laws protecting employees on medical leave**

Here are some of the laws that protect employees while on medical leave. Before you consider terminating an employee, be sure to review the details with an employment lawyer to ensure you're not violating their rights related to taking leave.

### **Americans with Disabilities Act**

The Americans with Disabilities Act (ADA) was created to protect individuals with disabilities from discrimination at work, school, and in all areas of their public life.

An employee must meet specific criteria to be covered under the disability act, but once met, those who go out on a medical leave of absence are protected. You want to ensure firing them doesn't violate their rights.

## **The Family Medical Leave Act**

The Family and Medical Leave Act (FMLA) is a federal law allowing employees of a company with 50+ employees to take unpaid job-protected leave for medical and family reasons covered under the act.

As with the ADA, to be protected by FMLA, you must meet particular criteria related to your status with the company and your reason for going on leave.

## **The Pregnancy Discrimination Act**

The Pregnancy Discrimination Act (PDA) protects employees who work for a company with 15+ employees who go on pregnancy-related leave. It protects pregnant women against discrimination, and that includes making accommodations for pregnant women to avoid discrimination.

## **State laws**

Beyond the federal level, several state-based laws protect those on medical leave. You want to ensure you're clear about the laws in place to protect your employees on medical leave since you don't want to violate their rights.

### **Depending on the state, you may see protections in place such as:**

- Statewide paid sick leave requirements.
- Job-protected unpaid leave for those on medical leave.
- Extensive paid lead rules for those on leave for different reasons.

As always, be sure to consult with an employment law attorney to ensure you're clear on the laws at all levels.

## **Employer Paid-Time Off Policies**

There are company-paid time off policies you also must ensure you're following. So if an employee has accrued paid leave time — absent of federal, state, or local laws, you must allow them to use their time followed by paid leave based on company policy depending on the laws.

## **Short-term and long-term disabilities**

Short and long-term disability is the last primary consideration to keep in mind when terminating an employee on medical leave.

While short-term and long-term disability typically doesn't offer job protection, and you can fire an employee out on leave, you still want to check with your attorney and the insurance carrier to ensure you avoid a claim of wrongful termination by the employee.

## **Examples of when employees can and can't be fired**

While there are many considerations you want to keep in mind before firing an employee on medical leave, here's a rundown of times when an employee can and can't be fired.

## **Employees on medical leave can't be fired if:**

- They're on FMLA leave.
- They can complete the essential functions of the job with reasonable accommodations, but you haven't provided those accommodations, according to the ADA.

## **Employees on medical leave can be fired if:**

- They don't return after 12 weeks of unpaid leave under FMLA.
- They don't communicate they're taking FMLA leave and violated their sick leave policy or used their sick time.

And

- They can't complete essential job functions with reasonable accommodations.
- They can complete their job with accommodations but won't return to work.

## **Can you be fired for being on sick leave?**

In most situations, you can fire employees for no reason because they're working at-will, and you're employing them at-will.

However, you want to ensure you're abiding by all leave laws.

Employees can't be fired just because they're sick. Your reason for firing the employee shouldn't be because they're ill or on medical leave. Instead, your reason for terminating an employee should be because of job performance-related issues or company layoffs.

## **Can an employee be terminated while on FMLA leave?**

Whether an employee can be terminated while on medical leave under FMLA depends on several circumstances, so you want to ensure you're abiding by the rules and regulations anytime there's an FMLA case.

First, an employee is only eligible for FMLA leave if they meet the following criteria:

- Worked for the company for at least 12 months.
- Worked at least 1,250 hours over the last 12 months.
- The company employs 50+ employees in a 75-mile radius.



Under FMLA, employees are eligible for up to 12 weeks unpaid, job-protected leave each year for conditions such as the birth, adoption, or fostering of a child, to care for a family member with serious health conditions and similar circumstances. During this time, their benefits remain intact.

As long as an employee returns to work within the allotted 12 weeks, you will typically be required to place them in the same position they had or a similar position in terms of rank and pay.

However, if they remain out of work longer than 12 weeks, you can fire them because they are outside FMLA protection. Also, if they violate other rules related to the policy, such as not providing notice of leave, they can be terminated.

Another time when you can terminate an employee on FMLA is when the termination isn't related to them being on leave.

For example, you can legally terminate an employee due to company layoffs or performance-related issues. You have to prove that they would have been terminated anyway had they not been on leave in these situations.

### **Can a disabled employee be terminated?**

According to the Americans with Disabilities Act, you can't fire an employee because they are disabled. The ADA protects employees from work-related discrimination based solely on their disability.

Employees must have an ADA qualified disability to have these protections, which means the disability (or perceived disability) leads to substantial limits based on mental or physical abilities.

You have to provide reasonable accommodations to your employees who have a disability. A reasonable accommodation is simply an adjustment to how they complete the work that makes them able to be successful with their disability. One accommodation could be a reasonable medical leave depending on the employee and their condition.

In this case, you can't terminate them because they have to go on leave since it's considered a reasonable

accommodation for their disability.

## Can an employee on short-term disability or long-term disability be terminated?

Short-term and long-term disability insurance are designed to provide employees with cash payments when they are out on leave from work due to medical issues and wouldn't typically receive a paycheck.

Having disability insurance alone doesn't offer job protection. It's simply a way for them to continue being paid while they're out on leave.

However, employees also qualify for FMLA or ADA in many cases while on short-term or long-term disability. As long as they follow the proper protocols, their leave will be protected.

## How to avoid medical leave related termination disputes

The last thing you want is for an employee to accuse you of terminating them unlawfully while on medical leave. So to avoid these medical leave related termination disputes, you should consider these tips:

- **Have clear policies** in your employee handbook that outline the process of taking medical leave. Be sure to include different programs and protections related to medical leave, such as FMLA, short and long-term disability, and the ADA.
- **Maintain employee performance records**, so if you have to terminate an employee for performance-related reasons, you have the records to back up your decision. Otherwise, if the employee is on leave, it'll be challenging for you to prove you're not terminating them for that reason.
- **Have a specific discipline plan** that's consistent for all employees. Therefore you won't have to dispute claims that you treat certain employees differently based on their circumstances. Instead, everyone will receive equal treatment based on the type of behavior they display at work.
- **Discipline employees consistently** across the board, so there are no claims of treating people differently.
- **Always seek the legal advice of an attorney** who's well versed in employment law before terminating an employee on medical leave. This additional step can save you time, money, and your reputation as a whole.

## When is it safe to terminate an employee on medical leave?

Typically, you're safe to terminate an employee on medical leave when the reason for termination has nothing to do with their leave.

### Some typical times when it's legal to do so is when:

- You have no choice but to lay off employees due to a reduction in work or closing offices.
- They have a prior history of performance-related issues, and they would have been terminated. anyway, had they not been on medical leave.
- The employee has been proven to be engaging in inappropriate behaviors while on leave that are illegal or fraudulent.