

## Lawsuit Risk

# Legal Traps to Avoid When Dealing with FMLA Requests

**W**HEN AN employee files a federal Family and Medical Leave Act request to either deal with a health issue or care for a loved one, their employer is often put in a tight spot, particularly if the person serves a vital role in their organization.

There are also a number of rules that employers need to follow to avoid running afoul of the law and there are plenty who have been sued for it, a prospect that can be costly.

If you are confused about navigating the FMLA, here's a handy list of mistakes to avoid.

## Firing

It would be a bad idea to fire an employee if they're unable to return to work following the end of FMLA leave that is due to a serious health condition. Better to find out if the employee is entitled to any additional time off under employment laws or through company policies.

The Americans with Disabilities Act may consider granting of additional leave "reasonable accommodation," in legal terms.

That definition comes from determining whether the employee's condition is a disability. Under the ADA, most serious health conditions as defined by the FMLA are considered disabilities. If you're in doubt, ask your legal counsel for advice.

Then you have to figure out whether the requested time off is legally considered "reasonable." Under the ADA, you as an employer don't have to grant leave as an accommodation if it poses "hardship" or "undue hardship" to your organization.

## Miscalculation

You are able to calculate FMLA leave by either calendar year, any fixed 12-month period, or the 12 months measured forward from when an employee's FMLA leave begins. It can also be calculated backward from a 12-month period from the date a worker uses the leave.

## Deadlines

Meeting FMLA deadlines for processing requests for leave under its guidelines is critical. Within five business

days of learning a worker has requested FMLA leave, you must provide them with the "Notice of Eligibility Rights and Responsibilities Form," or something similar that your company has prepared.

Next, if you require the employee to file a certification form, you must allow them 15 calendar days to do so. Then, within five business days of receiving the certification form, you must provide them with an FMLA designation form that tells them whether the request has been approved.

But if the certification form is incomplete or insufficient, you then must allow the worker seven calendar days to make necessary corrections. You must give written notice to employees of all deadlines, and the consequences of failing to meet them.

## Reassignment

If you want to reassign an employee on FMLA leave for better efficiency, you can only do so for those who need intermittent or reduced schedule leave.

Reassignments can be done for the employee, family or covered service member if such leaves are a planned medical treatment, a period of recovery from a serious health condition, or due to the birth of a child or placement of a child into adoption or foster care.

Beyond that, the reassignment is to be only as long as is required by the leave period.

You are also prohibited from transferring employees to a position to discourage them from taking FMLA leave. That means you can't demote them from marketing supervisor to customer service rep, even if their pay and benefits remain the same at the reassigned position.

Meanwhile, you may not require a transfer to another job when the employee's need for an intermittent or reduced schedule is unforeseeable.

## The takeaway

As you can see, the FMLA is a veritable minefield for employers and, if an employee requests leave under the law, you must make sure you don't do anything to infringe on their rights, lest you open your organization to being sued. ❖

