

Preventing FMLA Interference Claims

By Sarah O'Keefe

The Family and Medical Leave Act of 1993 is a federal law that requires employers to provide employees with job-protected and unpaid leave for qualified medical and family reasons. Most notably, the FMLA covers parental leave and personal or family illness.

What is an Interference Claim Under FMLA?

An interference claim is just as it sounds – a claim that an employer interfered with, restrained, or denied the use or requested use of any right provided by the FMLA. Interference may also be claimed if the employee's use of FMLA benefits is considered negatively during a performance evaluation or is held against the employee in employment decisions, such as promotions.

To prove interference, the employee must show entitlement to leave (and that he or she gave proper notice); that the employer took adverse action against the employee that interfered with the ability to take leave; and that the adverse action was related to the taking, or attempting to take, FMLA leave.

An interference claim must be filed within two years from the date of the interference, unless the employer's interference was a willful, which enlarges the statute of limitations to three years.

Employer's FMLA Notice Requirements

The FMLA allows eligible employees to take up to 12 weeks of unpaid leave every 12 months. To comply with the FMLA, employers are required to post a general notice explaining the FMLA and outlining the procedures for filing a claim. Many businesses post these notices in break rooms and provide procedures in employee handbooks.

Additionally, once an employee has requested FMLA leave, the employer must notify the employee of the employee's eligibility status, as well as his or her rights and responsibilities under the FMLA. Employers should also notify employees when the leave is designated as FMLA leave and the amount of time that will count against the employee's FMLA entitlement.

Employee's FMLA Notice Requirements

Sometimes employees can provide ample notice before leave is required, such as in a normal pregnancy or an adoption. Other times, employees cannot provide advanced notice, like when faced with the sudden illness of a child, spouse, or parent. An employee's obligation to provide advanced notice to the employer depends on if the employee's need for leave is foreseeable.

For example, a federal district court dismissed an employee's FMLA claim in [Bosley v. Cargill Meat Solutions Corporation](#). There, the employee, Bosley, did not use the company's system to report her absences or take any other step to let the company

know why she was absent. No one had much information as to why she was not showing up to work; though she had told a co-worker she was depressed. When Bosley returned to work to try to seek approval for her time off as FMLA leave, she was terminated. The court stated employees have an affirmative duty to indicate their need for FMLA, and in a case where the employee cannot give advanced notice, it may be given by an employee's spouse, family member, or another responsible party.

The sufficiency and timing of FMLA notices have been the subject of many court battles. Ultimately, context matters in deciding whether an employee provided sufficient notice that FMLA was needed.

Preventing an Interference Claim

To prevent a potential interference claim, employers should :

- Provide employees with an eligibility notice, rights and responsibilities notice, and designation notice in accordance to the Department of Labor's requirements.
- Be consistent and consider all written and oral requests for leave and whether the FMLA may be implicated in such requests.
- Be wary of taking adverse actions against employees who have sought or taken FMLA leave.
- If FMLA leave is granted, then any adverse action cannot be related to FMLA leave, and should occur only after the employee returns to work.
- If disciplining for absences, then do not consider FMLA leave as a factor.
- Keep good documentation on employee job performance, business operations, and measurements of success.
- Notify employees if their medical certification is incomplete or insufficient, what information is necessary, and provide enough time to resolve the issue before denying leave requests.
- Do not expect or ask an employee to work at all while on leave.
- Train human resources employees and management to be careful about what they put into writing.

FMLA is not a strict liability statute. Therefore, employees must prove that the law was broken, that the employer was responsible, and that they were harmed as a result. Employers must be careful to follow the law and ensure they have sufficient documentation throughout the FMLA process. If questions about an interference claim arise, then seek legal counsel.

About the Author



Sarah O'Keefe's practices in employment law, including litigation. You can read more about Sarah on our [website](#).