

Case Studies from Express



Family and Medical Leave Act

By studying other companies' Family Medical Leave Act (FMLA) violations, you can learn what mistakes to avoid and what steps you should take to follow the FMLA in your workplace. More examples, case studies, and information about the FMLA are available on the Department of Labor's website. In addition, Express is prepared to help you learn about this and other HR issues. Contact your Express office today to find out how you can learn more about this complex topic.

Employers don't have to offer double leave for the birth of a child.

Scenario: A husband and wife both work for the same employer. The couple has a baby and both request to be off work for 12 weeks each. The employer, not knowing how to deal with the situation, gives both employees permission to be off for 12 weeks.

What can you learn from this? As an employer, if two of your employees are both parents of a new born child, you do not have to allow for double leave. Both parents are limited to a combined total of 12 weeks for the birth of a child.

Employers must notify employees in writing when their leave will be counted as FMLA leave.

Scenario: An employee tells her employer she will need off for six weeks to care for her sick mother. The client does not tell the employee they are designating the leave as FMLA leave, but they do allow her to take off work. Two months later the employee requests to be off for 12 weeks to care for her mother, but the employer tells her she only has six weeks of FMLA available. The employee tells the employer that she did not know the first six weeks was applied to FMLA.

What can we learn from this? Even if an employee does not specifically request FMLA leave, you should require employees taking leave to provide sufficient information about the reason they need leave. If the reason qualifies as one of the allowed purposes of FMLA leave, then you must notify the employee that any leave taken for that purpose will count against the maximum FMLA entitlement of 12 weeks leave in a 12-month period (explain your 12-month period). The notice must be provided in writing within one to two business days of learning that the employee's leave qualifies for FMLA purposes. This notice must set out all of the employee's FMLA rights and obligations, including any duty to provide medical certification, provisions for substitution of accrued paid leave, benefit continuation rights and requirements, and job restoration protections.

FMLA covers leave for care of ill immediate family members.

Scenario: An employee who worked for her employer for three years notified her employer that she would need to take off for two weeks because her husband was having a major surgery. The employer told the employee it was their busiest time of the year and would not be able to grant the time off.

What can we learn from this? As an employer, if you have 50+ employees you must provide leave to qualified employees under the FMLA for the birth of a child, adoption or foster care, an immediate family member's serious health condition, the employee's own serious health condition, to respond to a qualified family demand created by a service member being called to active duty, or to care for service members who have become sick or injured in the line of duty.

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Temporary workers are included in the count when determining if a company meets the 50+ employee threshold under the FMLA.

Scenario: An employee who had been on a long-term temporary assignment with a specific employer needed time off under FMLA. The employer did not think they needed to offer FMLA because they had only 48 core employees. However, they also had 20 temporary employees who had been on assignment for over 20 weeks. The employer also thought they did not need to offer FMLA since the employee was a temporary.

What can we learn from this? Temporary employees are included in the headcount when determining if an employer meets the 50 employee threshold (be aware that this is lower in some states). Normally temporary employees do not work for more than 12 months or 1,250 hours, but if they do, you must provide FMLA leave. The staffing company is typically responsible for obtaining the leave request form and any other administrative duties, while the client company is responsible for providing job protection. There may be an exception if the temporary assignment will end prior to the employee returning to work (this should be established prior to the request for leave).

Hit with both the FMLA and the ADA.

Scenario: An employee who found out he had cancer requested to be off work for 12 weeks under the FMLA to receive treatment. At the end of the 12 weeks, the employee informed his employer that he would need to be off for one hour each month to receive continued treatment. The employer told the employee they would not be able to allow his additional time off because he had already used his FMLA leave.

What can we learn from this? Although the employee used his FMLA leave, he is still covered under the Americans with Disabilities Act (ADA). The ADA is not a leave law, but does recognize that one way to accommodate an employee is to allow them to use accrued unpaid leave for medical treatment and recovery. Under the ADA, employers may have to provide more leave than required under FMLA as a reasonable accommodation unless the employer can demonstrate it creates an undue hardship on the business. In this case, it will be hard to prove that the employee being absent one hour each month will create a hardship. The employer can ask the employee to come in early or stay late to make up the time if necessary.

There is a very fine line between the FMLA and the ADA.

Scenario: An energy company had an excellent short-term disability benefit that consisted of 60 percent of an employee's base pay while on disability for 26 weeks (6 months), which is well beyond the maximum required by the FMLA (12 weeks of unpaid leave). An employee of the company took leave under the FMLA. They then requested leave beyond the 12 weeks, and the leave was denied. The employee filed a charge with the EEOC stating that even though they exceeded their FMLA allotment, they should be given additional leave as a reasonable accommodation under the ADA. The EEOC ruled in favor of the employee.

What can we learn from this? Although an employee may use their maximum allotment of leave under the FMLA, they may be entitled to additional leave on a case-by-case basis as a reasonable accommodation under the ADA.