



HR for Business - ConsultStu LLC

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Information Paper

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Topic: Can an employee on FMLA be asked to perform any work?

The Family and Medical Leave Act (FMLA) entitles eligible employees of covered employers to take unpaid, job-protected leave for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. Even in the best situations and smooth transitions, there is often a need to contact an employee on leave to locate a file, learn the status of a project or ask for the completion of a task that only the employee knows about. Over the years, one of the common questions about FMLA is “can we ask an employee on full time FMLA to do ...” or “can we discipline an employee on full time FMLA if they do not return calls or emails in a timely manner.”

According to the FAQs on the Department of Labor webpage, an employer is prohibited from interfering, restraining or denying the exercise of FMLA rights, or the attempt to exercise any FMLA right. An employer is also prohibited from retaliating against an employee for engaging in legally protected activities. [DOL FMLA Fact Sheet #77B](#).

What type of employee contact is allowed? Courts have stated that reasonable contact limited to inquiries about the location of files or passing along institutional or status knowledge will not interfere with an employee’s FMLA rights; however, asking or requiring an employee to perform work while on leave can constitute unlawful interference. So, it may be ok to contact an employee on leave and ask questions about their work, but it will cross the line when an employee is asked to perform work duties. The actions of the employers should not discourage an employee from using FMLA leave.

What are some do’s and don’ts for employers?

You can likely do these:

- Occasional or sporadic calls
- Discuss job transfer, completing needed documents and salary negotiation
- Ask employee to return needed company materials
- Check with employee on return dates, possible extension
- Require simple ministerial acts that did not materially interfere with leave
- Modest, unburdensome assistance done during absence
- Request updates on closure on completed assignments

You should not do these:

- Require employee to update workload of cases, revise projects and drop off files. 20 to 40 hours worked performed during 2 months of FMLA leave.



- Make regular phone calls to employee and ask them to come in one day to resolve accounting issues
- Request that they check on sales leads and expect lead generation while on leave
- Ask an employee to perform work related tasks
- Continue to assign new work during the FMLA leave

It is recommended that employers create helpful written documentation (if needed in the future). Review your written FMLA communications and make sure it advises employees that they are not expected to, nor will be required to perform work, other than short, simple tasks, while they are on FMLA leave.

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HR for Business – Consultstu LLC provides fractional HR services to small/mid businesses, and helps those companies comply with HR mandates, minimize HR costs and improve HR efficiency. We assist our clients with customized HR solutions that provide protection from expensive HR mistakes and strategies for improving employee engagement. Contact Stuart Charlson at [727-350-0370](tel:727-350-0370), or email info@consultstu.com