



Employment Case Studies: Insights Into FMLA Violations

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Introduction

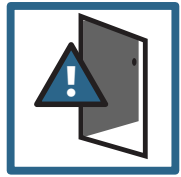
The U.S. Department of Labor's (DOL) Wage and Hour Division (WHD) administers and enforces the Family and Medical Leave Act (FMLA) for employees of covered employers. The FMLA applies to private employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year, as well as all public agencies—including federal, state and local employers—and local education agencies.

The 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. This law was enacted so employees could address serious and potentially unexpected life circumstances without risking their jobs.

Covered employers who do not comply with the FMLA can find themselves in complicated and costly legal situations. The WHD is authorized to investigate FMLA complaints, and if employer violations cannot be satisfactorily resolved, the DOL may bring court action against the employer to compel compliance. An employee may also be able to initiate a private civil action against an employer for FMLA violations. FMLA violations can be particularly costly, as they may involve paying back employees' lost wages and reinstating lost benefits. In fiscal year 2023, the WHD concluded [334 FMLA compliance actions](#) with violations and recovered more than \$987,000 in back wages for 395 workers.

This guide contains case studies that explore the most recent real-world examples of employers found to be in violation of the FMLA. The case studies include snapshots of violations and general guidance on how employers can prevent similar issues. Employers can examine these case studies to learn from the mistakes of others in comparable industries and avoid costly FMLA violations. The information covered in this article comes from the DOL's most current guidance for employers. Employers can find out more on the DOL's [website](#).

Real-world Case Studies



Fort Smith, AR—A WHD [investigation](#) found that a restaurant operator failed to reinstate an employee after the employee took FMLA-protected leave and illegally terminated the employee following their return. The employee received over \$11,000 in back wages (including hourly wages and wages from tips), and the employer was subject to an additional \$204 in civil money penalties.

What Went Wrong:

- The employer failed to reinstate an employee to the same or equivalent position after they returned from FMLA-protected leave.
- The employer later terminated the employee for refusing to report to another restaurant location in another town miles away.



Vance, AL—A WHD [investigation](#) discovered that a car manufacturer illegally disciplined and terminated two employees for absences protected under the FMLA. The employees received over \$438,000 in missed earnings, front pay, unpaid bonuses and liquidated damages.

What Went Wrong:

- The employer discriminated against employees who requested FMLA-protected leave by reprimanding them and denying them monthly attendance bonuses because of the absences.
- The employer illegally terminated the employees under the employer's attendance points systems, even though the employee absences were protected under the FMLA in both cases.
- The employer failed to accurately record, maintain and calculate the amount of FMLA leave taken.



Nashville, TN—A WHD [investigation](#) determined that two health care providers illegally terminated two workers who tried to exercise their right to request and use FMLA-protected leave for a qualifying health condition. The employer was required to pay over \$47,000 in back wages and liquidated damages.

What Went Wrong:

- The employer illegally fired two employees after they exercised their right to request and use FMLA-protected leave for a qualifying health condition.
- The employer failed to include all the required FMLA information in their company handbook.
- The employer failed to inform the employee that they could use FMLA-protected leave.
- The employer did not provide the notice of the required rights and responsibilities.



Avoiding FMLA Violations

The case studies illustrate the difficulties in avoiding FMLA violations. Due to the complex nature of the FMLA, compliance is an ongoing challenge for employers. By regularly reviewing the FMLA and workplace policies and procedures, employers can keep their organizations compliant and provide their workers the leave to which they are entitled. Below is general guidance on the issues discussed in the case studies, categorized by violation type.



Illegal Termination

Employers are prohibited from discharging an employee for exercising or attempting to exercise their FMLA rights. In each of the case studies, the employers terminated employees who exercised or tried to exercise their right to FMLA-protected leave. As a result, the employers were required to pay significant monetary penalties. Employers should be aware of situations where an employee qualifies for FMLA leave to avoid wrongfully disciplining or terminating otherwise protected employees. Employers should also ensure that managers and HR personnel are trained to handle and address family and medical leave requests properly.



Failure to Reinstate

Under the FMLA, an employee is entitled to be returned to the same position the employee held when leave commenced or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment (unless an exception applies). An employee is entitled to such reinstatement even if they have been replaced or their position has been restructured to accommodate the employee’s absence.

In the Fort Smith, Arkansas, case study, the employer failed to reinstate the employee to the same or equivalent position after returning from FMLA-protected leave. Instead, the employer required the employee to report to a different location miles away, and when the employee refused, the employer illegally terminated the employee. The requirement to report



Discrimination

Under the FMLA, employers are prohibited from discriminating against an employee for exercising or attempting to exercise any FMLA right. Examples of such discrimination include using an employee’s request for or use of FMLA leave as a negative factor in employment actions—such as hiring, promotions or disciplinary actions—and counting FMLA leave under “no-fault” attendance policies.

In the Vance, Alabama, case study, the employer discriminated against two workers by reprimanding them for attempting to exercise their rights under the FMLA. The employer further discriminated against the workers by denying them monthly attendance bonuses because of absences that should have been protected under the FMLA. Such absences ultimately led to termination under the employer’s attendance policy. Each of these actions violated the FMLA’s prohibition on discrimination. Employers should implement policies and procedures to ensure that employees are not subject to discrimination or otherwise penalized for taking or requesting protected leave.



Notice and Recordkeeping Requirements

The FMLA requires covered employers to provide a general notice to their employees regarding the FMLA. To satisfy the notice requirement, employers must display or post a general notice (or poster) and, if the employer has any FMLA-eligible employees, provide a written general notice to employees in the employer's handbook or other written materials about leave or benefits.

Furthermore, when employees exercise their FMLA rights, employers are required to provide them with notices of eligibility and rights and responsibilities. Failure to notify employees in a timely manner of their eligibility for FMLA leave may constitute interference with, restraint or denial of an employee's FMLA rights, which can expose employers to liability. Employers are also required to maintain certain FMLA-related records for at least three years. Records and documents relating to FMLA medical certifications of employees and their family members must be maintained separately from personnel records as confidential medical records. Employers who willfully violate these FMLA requirements may be subject to a civil penalty for each violation.

In the Nashville, Tennessee, case study, the employers failed to include all of the required information about the FMLA in the employee handbook. The employer also failed to provide the employees with the information regarding FMLA leave, including notices regarding the employee's eligibility for FMLA-protected leave and the required FMLA rights and responsibilities notice. In addition, in the Vance, Alabama, case study, the employer failed to properly record, maintain and calculate the amount of FMLA leave taken. To avoid similar violations, employers should ensure that they understand their FMLA notice and recordkeeping requirements and review their policies regularly to avoid potential violations.

Conclusion

These case studies demonstrate how difficult it can be to comply with the FMLA. Therefore, it is important for employers to understand their obligations under the FMLA and ensure personnel is properly trained. Employers should consider seeking professional guidance before making potentially costly decisions. By learning from these employers' mistakes, others in similar industries can avoid major violations and prevent FMLA-related lawsuits.

