



Employment Case Studies: Today's FMLA Violation Trends

Provided by **Employco USA, Inc.**

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 all private and state and local government employees, as well as some federal employees. 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. The FMLA applies to private employers who employ 50 or more employees in 20 or more workweeks in the current or preceding calendar year, all public agencies—including federal, state and local employers—and local education agencies.

Covered employers who do not comply with the FMLA can find themselves in messy and costly legal situations. The WHD is authorized to investigate FMLA complaints. 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.

At the start of 2022, the DOL announced an initiative to hire 100 additional WHD investigators, signaling a potential increase in enforcement in 2022 and beyond. This initiative means now is the time for employers to review their FMLA policies and practices to ensure compliance with all relevant laws.

This article 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



LAKE CITY, FL—A [DOL investigation](#) found that an assisted living facility illegally terminated an employee after the employee exercised their federally protected medical leave rights. The employer was forced to pay the employee \$1,894 in back wages.

What went wrong:

- The employer denied an employee medical leave under the FMLA despite the fact the employee met all eligibility and qualifying requirements for leave.
 - The employer illegally terminated the employee after the employer failed to grant the employee protected leave for a medical condition covered by the FMLA.
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ATLANTA—A [DOL investigation](#) discovered that the Georgia Department of Public Health wrongly disciplined and terminated an employee for absences protected under the FMLA. The department was ordered to pay \$77,314 in back wages and reinstate the employee.

What went wrong:

- The department denied the employee's request for leave for an FMLA-qualified condition.
- The employee's denial of FMLA benefits resulted in wrongful discipline and subsequent termination.



LOS ANGELES—A [DOL investigation](#) uncovered that a slaughterhouse and packing company illegally terminated an employee after the employee took FMLA-protected leave. The employee received \$11,209 in back wages.

What went wrong:

- The employer failed to provide the employee with FMLA-related information prior to their medical leave.
 - The employer did not inform the employee of their FMLA rights and protections.
 - The employer illegally terminated the employee after the employee took FMLA leave.
 - The DOL determined that the employer violated the FMLA's policy review and recordkeeping provisions.
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LITTLE ROCK, AR—A [DOL investigation](#) found that a large waste management company illegally terminated an employee who used qualified FMLA leave to address a serious health condition. The employer was ordered to pay the employee \$36,007 in back wages, which included wages the employee would have earned while they were unemployed and a 3% company-matched 401(k) contribution.

What went wrong:

- The employer violated the FMLA when they terminated an employee for taking FMLA leave after the employee notified their supervisor of the need for medical leave. The employee's leave request was approved by the employer's third-party FMLA administrator.
- The employer recorded the employee absent on the first day of their FMLA leave and then promptly terminated the employee.
- The employer failed to rehire the employee after learning that the employee's FMLA leave had been approved.

Avoiding FMLA Violations

The case studies illustrate that avoiding FMLA violations isn't always simple. 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 they're entitled to. Below is general guidance related to the issues discussed in the case studies, categorized by violation type.

The FMLA protects workers who need to take a prolonged absence due to a qualified family or medical reason. This law was enacted so employees could deal with serious and potentially unexpected life circumstances without losing their jobs. Yet, an employee can follow all proper procedures to take leave, and an untrained or uninformed manager may still violate the law, resulting in costly consequences.

FMLA violations can be particularly costly, as they may involve paying back employees' lost wages and reinstating lost benefits. Employers need to ensure managers, employees and other stakeholders understand their FMLA rights. This includes knowing how to submit FMLA requests, understanding situations that might qualify for FMLA leave and comprehending workplace guarantees that come with this leave (e.g., job protection). Understanding these details can help prevent wrongful termination and significant monetary penalties. Employers can learn more about the FMLA's individual protections on the DOL's [website](#).



FMLA Interference, Restraint or Denial of Rights

Employers are prohibited from interfering with, restraining or denying the exercise or the attempt to exercise any FMLA right. In this article's Lake City, Florida, case study, the assisted living facility wrongfully denied FMLA leave to an employee who qualified for leave based on their serious medical condition. Employers are required by the FMLA to be aware of conditions that qualify for FMLA leave to avoid wrongfully interfering with, retraining or denying employees otherwise entitled to leave.

In certain circumstances, an employer may require an employee to submit a certification to support their need for FMLA leave. A certification allows employers to obtain information related to an employee's FMLA leave request, including the likely periods of absences, and verify that the employee or their family member has a serious health condition. Employers requesting certification are required by the FMLA to follow specific guidelines, which they can learn more about in the DOL's [employer's guide](#) to the FMLA. Employers are not required to use a specific certification form, but they may use the DOL's model form available on the department's [website](#).



FMLA Discrimination or Retaliation

Employers are prohibited from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right. In the Little Rock, Arkansas, case study, the employer recorded the employee absent from work on their first day of FMLA leave despite the fact the employee qualified for leave and the employer's third-party administrator had approved the employee's leave. The employer then terminated the employee while on leave. Employers must be careful not to discriminate or retaliate against employees who exercise their FMLA rights.



Illegal Termination

Employers are prohibited from discharging an employee for exercising or attempting to exercise their FMLA rights. In this article's Atlanta, Georgia, case study, the Georgia Department of Public Health wrongly denied the employee's request for FMLA leave, believing the employee's condition did not qualify for leave. As a result of denied leave request, the employee was disciplined and subsequently terminated due to absences related to their FMLA-qualified condition. The FMLA requires employers to be aware of situations in which an employee qualifies for FMLA leave to avoid wrongfully disciplining or terminating otherwise protected employees.



FMLA Policy and Recordkeeping Violations

The FMLA requires covered employers to post a general notice regarding employees' FMLA rights. This notice must be displayed in plain view where all applicants and employees can see it. Employers are also required to provide FMLA-eligible employees a general notice about FMLA leave and benefits. When employees exercise their FMLA rights, employers are required by the FMLA to provide employees with eligibility and rights and responsibilities notices. Failure to timely notify employees of their eligibility for FMLA leave may constitute interference with, retrain or denial of an employee's FMLA rights, which can expose employers to liability. Employers are also required to make, keep and preserve 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 Los Angeles, California, case study, the employer failed to provide the employee with information regarding FMLA leave prior to taking leave, including information about leave protections. The employer also failed to adhere to FMLA recordkeeping and policy requirements. Employers must be aware of FMLA recordkeeping and notice requirements and review their policies regularly to avoid potential violations.

Conclusion

These FMLA case studies demonstrate how easy it can be for an employer to face challenges related to FMLA compliance. That's why it's so important for employers to understand FMLA requirements and ensure staff 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.

Reach out to us for more information regarding FMLA compliance.

*The information in this article is not intended to be construed as legal or professional advice. Employers seeking legal advice should speak with legal counsel.
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