

Q&A

HR Legal Compliance

Courtesy of Better Business Planning, Inc.

Q

What are the requirements for restoring an employee to his or her original position upon return from FMLA leave?

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Upon return from Family and Medical Leave Act (FMLA) leave, an employee must be restored to his or her original position or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. An employee is entitled to reinstatement even if he or she was replaced during the leave or if the employee's position was restructured to accommodate his or her absence. However, there are circumstances under which reinstatement is not required.

An employee on FMLA leave has no greater right to reinstatement than an employee who was not on leave. For example, an employer is not required to reinstate an employee if it can be proven that the employee would have been terminated or laid off regardless of being on leave. If an employee is unable to perform an essential job function because of a physical or mental condition, including the continuation of a serious health condition or an injury or illness covered by workers' compensation, the FMLA does not require an employer to restore the employee to another position. However, the employer may have other obligations to that employee under the Americans with Disabilities Act (ADA), state laws or workers' compensation laws.

In addition, an employer is not required to restore an employee who fraudulently obtained FMLA leave. An employer may also delay reinstatement of an employee who fails to provide a required fitness-for-duty certification to return to work.

Furthermore, if specific requirements are met, employers may refuse to reinstate certain highly paid key employees following FMLA leave, where restoration would cause substantial and grievous economic injury to their operations. A key employee is a salaried employee who is among the highest-paid 10 percent of all employees within 75 miles of the work site.

