

TOP TEN FMLA VIOLATIONS LIST

The Federal Family and Medical Leave ACT (FMLA) 29 CFR part 825, became effective on August 5, 1993. Since that date, our office (D.O.L.) has answered thousands of compliance questions from employers and employees. The Wage and Hour Division has processed over 2,000 employee complaints. Our experience has allowed us to identify the most common violations.

The following list will alert employers to personnel actions, which will likely cause employees to file complaints with us (Dept. Of Labor). The pertinent section of the regulations is cited for your reference.

1. Failure to notify employee of FMLA rights. (825.300-.301)
2. Failure to notify employee that leave counted towards 12-week FMLA entitlement. (825.208(b)(1)-(b)(2))
3. Counting FMLA leave against the firm's absentee policy for disciplinary purposes. (825.220(c))
4. Taking disciplinary action against employee for using FMLA. (825.220(c))
5. Failure to grant leave to provide physical care or psychological comfort to a seriously ill parent. (825.116(a))
6. Failure to reinstate a employee to same or equivalent position.
7. Terminating an employee during or at the conclusion of FMLA leave. (825.216)
8. Failure to grant FMLA leave because of a misunderstanding of what qualifies as a "serious health condition". (825.114)
9. Failure to request medical certification in writing and not giving employee at least 15 days to obtain medical certification. (825.305)
10. Failure to handle questions about the validity of a medical certification by guidelines set forth in FMLA regulations. (825.307)

Additionally, under Management Instruction EL- 860-98-2, FMLA documentation can become "restricted medical record" when it includes restricted medical information, diagnoses and/or does not involve a worker's compensation claim. As such, it is highly confidential, reflect the privileged employee-occupational health provider relationship, and have the most limitations placed on both their access and disclosure. Only medical personnel or postal personnel with a need to know have access to this material. These records are maintained only in medical offices or facilities in employee medical folders (EMFs) unless otherwise directed by the national medical director. Any request for review of this information must be made in writing and is not automatically approved.

Whenever information from a restricted medical record is released to any authorized person, the EMF must note the action, including:

- The purpose as expressed by the requester.
- The requester's name, address, and organization.
- The signature of the requester.
- The information released.
- The date the information was released.

Questions about access to, or disclosure of, medical records involve the Privacy Act, which applies to records about individuals that are maintained in government systems of records. The Privacy Act provides criminal penalties for any employee who willfully discloses information knowing that disclosure is prohibited, and for any person who knowingly and willfully requests or obtains under false pretense any records about another person.

The Privacy Act prohibits additional copying of covered documents, verbal disclosure of information contained in the documents, or distribution of the documents to any person not authorized to receive the information.