

Fact Sheet #77B: Protection for Individuals under the FMLA

This fact sheet provides general information concerning the Family and Medical Leave Act's (FMLA) prohibition of retaliating against an individual for exercising his or her rights or participating in matters protected under the FMLA.

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.

Prohibitions

Section 105 of the FMLA and section 825.220 of the FMLA regulations prohibit the following actions:

- An employer is prohibited from interfering with, restraining, or denying the exercise of, or the attempt to exercise, any FMLA right.
- An employer is prohibited from discriminating or retaliating against an employee or prospective employee for having exercised or attempted to exercise any FMLA right.
- An employer is prohibited from discharging or in any other way discriminating against any person, whether or not an employee, for opposing or complaining about any unlawful practice under the FMLA.
- All persons, whether or not employers, are prohibited from discharging or in any other way discriminating against any person, whether or not an employee, because that person has—
 - Filed any charge, has instituted, or caused to be instituted, any proceeding under or related to the FMLA;
 - Given, or is about to give, any information in connection with an inquiry or proceeding relating to any right under the FMLA; or
 - Testified, or is about to testify, in any inquiry or proceeding relating to a right under the FMLA.

Examples of prohibited conduct include:

- Refusing to authorize FMLA leave for an eligible employee,
- Discouraging an employee from using FMLA leave,
- Manipulating an employee's work hours to avoid responsibilities under the FMLA,
- 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, or,
- Counting FMLA leave under "no fault" attendance policies.

Any violations of the FMLA or the Department's regulations constitute interfering with, restraining, or denying the exercise of rights provided by the FMLA.

Employer Coverage

FMLA applies to all *public agencies*, including state, local and federal employers, *local education agencies (schools)*, **and private-sector employers who employed 50 or more employees in 20 or more workweeks in the current or preceding calendar year, including joint employers and successors of covered employers.**

Enforcement

The Wage and Hour Division administers and enforces the FMLA for all private, state and local government employees, and some federal employees. The Wage and Hour Division investigates complaints. If violations cannot be satisfactorily resolved, the U.S. Department of Labor may bring action in court to compel compliance. An employee may also be able to bring a private civil action against an employer for violations. **In general, any allegation must be raised within two years from the date of violation.**

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

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