

Dear HR Knowledge, is it okay to terminate an employee on FMLA leave?

Terminating employees is never easy. Terminating employees while they're on leave can lead to retaliation and wrongful termination claims if not done correctly and only in narrow situations where the employer has a legitimate business reason for doing so. A case between Akima Infrastructure Services and one of its employees demonstrated that employers do have the right to terminate employees on FMLA leave if there is a legitimate business reason to do so and the termination does not interfere with an employee's rights under FMLA.

Background

In late 2014, Akima hired an employee, Sarah Rodriguez, who requested a leave of absence in June 2015 due to her pregnancy. The company granted her leave beginning in June. However, by the end of September, it had decided to eliminate Rodriguez's position for a number of reasons. One reason was that the company was anticipating a severe drop in revenue and therefore decided to eliminate Rodriguez's position and divide her role between her manager and another employee. When Akima contacted Rodriguez at home to end her employment, Rodriguez sued, claiming she had the right to return to work because her position was protected under the FMLA.

What happened?

The court ruled in favor of Akima, on the basis that FMLA leave doesn't create a greater right to a position reinstatement than the employee would receive if she had not taken the leave. Akima had documented everything, including the reasons for termination. Its legitimate, well-documented reasons for eliminating Rodriguez's position clearly demonstrated that she would still have been terminated even if she had not taken FMLA leave.

Takeaway for employers

Document. Document. Document. Akima was able to prove that it was justified in terminating Rodriguez by documenting the company's legitimate business reasons for doing so. It's a best practice to document everything you do involving a termination in case of legal action taken against you. We also recommend reviewing your current FMLA and leave policies to better inform your employees of their rights and your expectations during their leave. If you have questions or need additional guidance on FMLA leave, please [contact us](#).

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