



Dear HR Knowledge, my employee has been out on leave and they are now telling us they have no idea when they will be able to return – can I terminate them?

The best laid plans do indeed often go awry. An employee on medical leave may have every intention of returning by a specific date, but life has a way of altering even the most concrete plans.

Meanwhile, you have a business to operate and need to fill this essentially open position. Firing the employee might seem like the simplest solution — but proceed with great caution. In Massachusetts, terminating someone without first determining if it's reasonable to extend the leave is unlawful. You need to keep in mind that upon reaching the Family and Medical Leave Act (FMLA) 12-week limit, courts will look to the language of the Americans with Disabilities Act (ADA), under which covered employees may qualify for extended leave. Those who need a finite amount of additional time off may be legally entitled to more leave as a "reasonable accommodation" that's required under the ADA.

A good place to start is by having an open dialogue with your employee about the new return to work date. Your employee is likely just as frustrated, not to mention anxious, over the situation as you are. Ill health, medical procedures, and mounting concerns over when or if they will ever feel well enough to work again can take a toll on anyone.

While your employee may not have a clear idea of exactly when they can return, talking it out could go a long way toward clarity. Remember that, as an employer, you have the right to obtain job-related medical information to help determine if there are any accommodations your organization can make. From there, you might better determine if the flexibility of a few extra weeks is needed or if the employee will be able to return to work at all. Hopefully, the employee will be able to return to work. Sure, a couple of extra weeks' leave might not be the outcome you desired, but as an employer you need to consider all accommodations and understand you may need to be flexible in these situations.

That said, if the employee has no idea when they will be ready to return to work and/or if they will be able to function to the level of capacity prior to the medical leave, then the obligation to extend the leave no longer exists.

The best advice we can offer employers is to have a clear process and follow it. Make sure you have provided your employee with all the appropriate paperwork and notices and keep an open dialogue. And remember, unlimited leave is not considered a "reasonable" accommodation.

About HR Knowledge

Founded in 2001, HR Knowledge, Inc. provides integrated outsourced HR services tailored to our clients' needs. Our full array of offerings includes managed payroll, employee benefits administration, and HR consulting and support services, such as training, compliance, and Hiring Process Management™, our comprehensive recruitment service that takes you from finding to onboarding new talent. Our major markets are fast-growing small- and medium-sized businesses,

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