

## Dear HR Knowledge: We offered our employee the paperwork to take FMLA and they declined; can an employee decline to use FMLA?

Often an employer's desire to make their employees happy outweighs their desire to follow the letter of the law. The simple answer is No, an employee cannot decline to use FMLA. As the employer, you must require adherence to FMLA regulations and apply the leave as mandated.

The Family Medical Leave Act (FMLA) guarantees certain employees up to 12 workweeks of job-protected unpaid leave each year. FMLA leave typically covers time away from work for the following reasons:

- birth of a child and to care for the newborn child;
- placement of a child for adoption or foster care and to care for the newly placed child;
- care for a family member with a serious health condition;
- care for the employee's own serious health condition; and
- certain military-related reasons.

FMLA regulations require an employer to designate a leave as FMLA leave within 5 business days of learning of the qualified reason. Failure to do so may result in FMLA interference or a denial claim, both of which can lead to fines or a court case, which can be costly. It is also important to realize that you are not permitted to allow an employee to simply take paid time off or vacation in lieu of starting the FMLA leave clock even if that is the employee's request. Paid time off is not an acceptable replacement for FMLA if the employee is eligible for FMLA.

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Under FMLA regulations, an employee cannot decline FMLA leave to save that time for future use. If a qualified leave presents itself, it must be treated as such and the employee does not have the right to decline that leave.

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