



DEAR HRK

We have an employee out on leave and now they are telling us they have no idea when they will be able to return – what do we do?

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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.

You would think based on the frequency we are asked this question we would have a concrete black-and-white answer; however, as with most HR compliance responses this one lives in the gray and there is no “one size fits all” approach when it comes to addressing an employee's leave of absence as each situation must be handled based on the relevant details of that specific set of circumstances.

We get it, you have a business to operate and need to fill this essentially open position. Thinking about separating with this employee may appear to be a simple solution but proceed with great caution.

In many states, terminating an employee without first determining if it's reasonable to extend the leave is unlawful. Employers covered under the federal Family and Medical Leave Act (FMLA) can begin by determining if the employee exhausted their FMLA leave entitlement, which includes being provided the applicable notices and paperwork. In addition, there could be other leave entitlements under state law that may need to be considered. It does not end there, as employers must take into consideration the federal Americans with Disabilities Act (ADA). Covered employees may qualify for an extended leave as a reasonable job accommodation under the ADA.

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A good place to start when you are faced with this situation is 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. Sure, a couple of extra weeks' leave might not be the outcome you desired, but as an employer, it's best to consider all accommodations and understand that 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.

With the myriad of leave laws protecting employees, employers need to approach the termination of employees as related to leave with caution. The best advice we can offer employers is to have a clear process and policy and then 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.

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