

## FMLA FAQ: Does an Employer Violate the FMLA When an Employee Answers E-Mail or Telephone Calls While on Leave?

By Jeff Nowak March 05, 2012

**Q: An employee who recently returned from FMLA leave claims that a portion of his leave of absence should not count against his FMLA entitlement because he responded to a number of work-related e-mails and telephone calls while he was out. Can we still count this time as FMLA leave?**

A: I have fielded this question from several employers lately, so I figured I would tackle it head on. In this situation, what an employer is worried about is FMLA "interference" -- the idea that the employer is denying the employee FMLA benefits to which he otherwise was entitled.



In a nutshell, an employee is unlikely to establish an FMLA interference claim simply because he responds to some e-mail and a few phone calls during leave.

Generally, courts find that fielding occasional calls and e-mails that relate to your job while on leave is a "professional courtesy" that does not interfere with FMLA leave. Therefore, a few work-related communications likely will not constitute interference with an employee's FMLA rights. As one federal court in New York put it, when an employee is passing on "institutional knowledge" or providing closure on open assignments, employers do not violate the FMLA.

What about the employee who is answering e-mails and calls without the boss' knowledge? Generally good news for employers here, too. Several courts have refused to find FMLA interference where an employee performed work while on leave without first informing his supervisor that he did not want to work or was too fatigued to do so. Soehner v. Time Warner Cable, Inc.

### Insights for Employers

1. There are no hard and fast rules about contact between employee and employer during FMLA leave. As a general rule, an employee on leave should be fully relieved of their work and not asked to perform work while on leave. That said, as evidenced by the cases highlighted above, it is unlikely to be an FMLA violation when an employer makes sporadic calls to an employee posing general questions (where they can find the company business plans, for example) or to wrap up a job the absent employee was working on. Also, as evidenced in the Soehner case above, it is unlikely to be an FMLA violation where the employee is working behind the boss's back.

Tread carefully here, though. If your employee is on FMLA leave and you learn that he or she is performing work (including regularly answering work-related e-mails and/or calls), the best course to reduce the risk of any FMLA (or FLSA) liability is to put an end to the work.

# FMLA Insights

*Guidance & Solutions for Employers*

2. Watch out for possible FLSA issues where an employee performs work while on leave. For best practices on the wage and hour side, see my colleague [Bill Pokorny's](#) post on our [Wage and Hour](#) blog [here](#).

Copyright © Franczek Radelet P.C. All Rights Reserved. Disclaimer: Attorney Advertising. This is a publication of Franczek Radelet P.C. This publication is intended for general informational purposes only and should not be construed as legal advice.