What Is Considered FMLA Harassment? Tips for Employers to Avoid Fines & Lawsuits

Employers subject to FMLA regulations can violate employee rights in many ways, which can lead to penalties and even more expensive civil lawsuits. One method of FMLA violations involves employer retaliation and harassment. But many employers may be wondering, “What is considered FMLA harassment?” First, let’s discuss which employers the FMLA regulates.

Who Does the FMLA Govern?

FMLA provisions apply to companies with 50 or more employees and public employers such as government agencies and public schools. Those provisions include allowing employees up to 12 weeks of job-protected unpaid leave each year while maintaining group-health benefits. These employee rights are enforced by the Department of Labor’s (DOL) Wage and Hour Division and, according to the DOL, can be exercised for many reasons including:

- For the birth and care of the newborn child of an employee;
- For placement with the employee of a child for adoption or foster care;
- To care for an immediate family member (spouse, child, or parent) with a serious health condition; or
- To take medical leave when the employee is unable to work because of a serious health condition.

What Is Considered FMLA Harassment?

While there is no specific mention of harassment in FMLA legislation, employers are not allowed to interfere with employees who take FMLA-covered leave. Attempts to interfere can amount to harassment in many different forms, which may give an employee reason to pursue litigation to protect their rights.

Here are some examples of potential FMLA harassment by employers:

- Not recognizing legitimate FMLA leave
- Requiring unreasonable notice for taking covered leave
- Employee is placed in a different position after return from leave
- Retaliation in the form of demotion, pay cut, decreased or increased job duties, and even termination
- Loss of eligibility for promotion
- Requiring employees to work during covered leave

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