

Stop FMLA Abuses

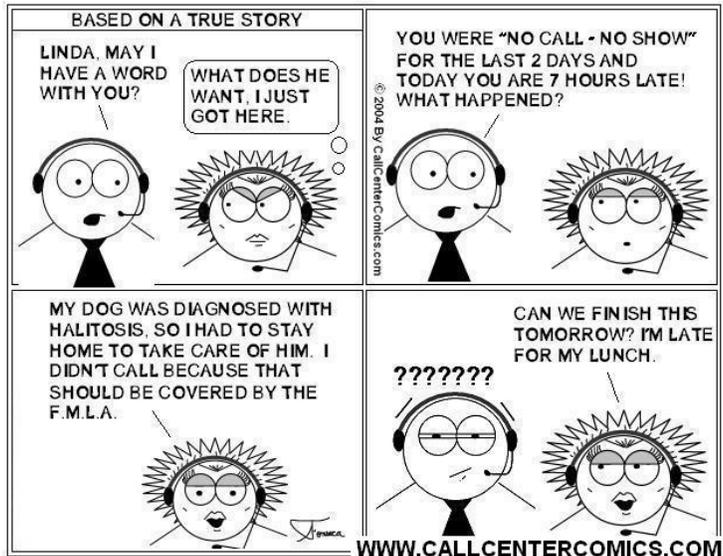
5 ways to stop FMLA abuse dead in its tracks.

With all of the laws out there protecting employee rights, many employers feel it's a problem they are powerless to stop. As a result, they don't closely question employees about their FMLA requests. That can be very costly.

For example, here's what can happen when you put employees on the honor system: One employer revealed that as much as **30%** of its workforce is absent on any given day — and the majority of those absences are FMLA-related.

Employment law attorney and FMLA expert **Jeff Nowak** says figures like that are a clear sign the employer has fallen victim to FMLA abuse.

The employer in question was one of his clients. To help employers stuck in situations similar to his client's, Novak has offered up **this list of measures** companies can take to significantly reduce FMLA abuse:



1. Make employees hand in leave request forms -

While it's true that an employer cannot deny a worker FMLA leave if the person puts the employer on notice of the need for leave, simply requiring the employee to actually write out his or her request often deters the person from taking unnecessary absences. This can also be an effective strategy for cutting down on all types of absences.

2. Create and enforce a call-in policy -

If you have a policy that says something like, "All employees must call in one hour before their shift starts to report an absence," it's generally OK to require employees out on FMLA leave to abide by that policy. If employees out on FMLA leave fail to call in before they are absent, it's OK to deny FMLA leave — as long as there are no unusual circumstances. There's a good chance that if an employee knows he/she must call in every day, the person may think twice about abusing their FMLA privileges.

3. Keep the lines of communication open -

Even if you don't have a formal call-in policy, it's important to maintain contact with employees on FMLA leave. An effective strategy could be something as simple as having supervisors call staffers that are out on FMLA leave once a week.



Nowak says employers are often amazed at the results maintaining contact with absent employees can have when it comes to reducing FMLA abuse.

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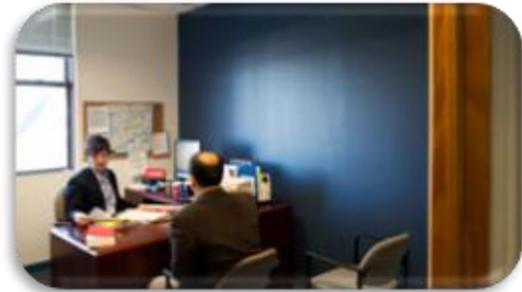
4. Keep those certifications coming-

The best way to keep employees honest? Require them to certify their absence and seek recertification when circumstances change (*like an employee needs an extra day a week of intermittent leave*). Remember, once you inform an employee of the need to obtain a certification you must give the employee **15 days** to get the certification and return it to you — unless it's not practicable under the circumstances and the employee is making a good faith effort to return it to you.

5. Give managers/supervisors a list of questions to ask all employees when they call in sick-

Employers have the right to ask employees certain questions about why they need leave, as long as they don't ask for genetic information (*a.k.a. family medical history*). Here are some questions Nowak says are worth asking employees every time someone calls in absent:

- What is the reason for the absence?
- What part of the job can't you perform?
- Will you see a doctor?
- Have you been absent for this condition before? If so, when?
- When did you first learn of your need to be absent?
- When do you expect to return to work?



Resource:

Jeff Nowak:

Jeff serves as co-chair of the firm's Labor and Employment Practice and recently was named by Law Bulletin Publishing as one of Illinois' top "40 Attorneys Under 40" to watch in 2012. Jeff represents private and public sector management clients in all areas of labor and employment law. He regularly counsels and litigates single- and multi-plaintiff matters relating to employment discrimination and traditional labor claims, and has extensive trial experience before labor arbitrators, judges and juries, in both federal and state courts and before administrative agencies. He has extensive experience dealing with the Family and Medical Leave Act (FMLA) and the Americans with Disabilities Act (ADA), including counseling clients on compliance with FMLA regulations, conducting FMLA audits and training, and successfully litigating FMLA and ADA lawsuits.

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