



Labor and Employment Law Alert

Employers Control Designation of Leave as FMLA-Qualifying, Not Employees, Says U.S. DOL

By Chris Thrutchley
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Managers and supervisors need to pay careful attention to Family and Medical Leave Act (FMLA) compliance, because it is one of the few areas of employment law where they can be held *personally* liable for violations—whether they meant to or not. Now that the U.S. Department of Labor (DOL), under the Trump administration, is issuing more opinion letters to provide guidance, employers should take note. Last week, the DOL issued an [opinion letter](#) confirming two key FMLA compliance principles.

1. **Once employers have enough information to know a leave is FMLA-qualifying, they *must* notify the employee in five days that it has been designated—absent extenuating circumstances.** Often, the front-line supervisor learns enough about an employee's absence that he or she should know it is FMLA-qualifying and should immediately alert Human Resources so timely designation can be made, but the supervisor doesn't realize the leave is FMLA-qualifying due to lack of training and fails to notify HR. This creates risk of an FMLA interference claim against both the employer, the front-line supervisor, and potentially individual HR professionals. Front-line supervisors often are an employer's front-line of defense against costly FMLA claims. Make sure they've been adequately trained to spot critical FMLA compliance issues.
2. **Employees do not have the right to tell employers when to designate their leave as FMLA-qualifying.** We get enough calls from clients and do enough management training to know most HR professionals have had an employee say they don't want to designate an absence as FMLA-qualifying, "because they still have accrued vacation or PTO and want to save their 12-weeks of FMLA." According to the DOL, however, employees are not allowed. If the leave is FMLA-qualifying, the FMLA *requires* employers to designate it as such and count it against the employee's 12 weeks of annual FMLA leave.

Make sure your front-line supervisors and managers know they need to alert HR promptly when they believe an absence may be FMLA-qualifying and if they are in doubt, to reach out to HR. If

they don't know when an absence may be FMLA-qualifying, then arrange for them to receive the essential training they need before it's too late. Make sure they know that when the next employee insists the leave should not count as FMLA. The employee must be notified it would violate the FMLA.

GableGotwals' labor and employment practice group regularly provides management training. We offer both basic and advanced FMLA compliance training, as well as harassment prevention training, discrimination prevention training, retaliation prevention training, ADA compliance training, and other areas of training to help employers minimize risk of costly employment claims. To have your FMLA policy reviewed and updated or to arrange FMLA training your leaders, please contact any **[GableGotwals employment attorney](#)**.



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