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# Family and Medical Leave Guide

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The *Family and Medical Leave Guide* answers those complex issues that arise as leave is being administered day by day. This single volume publication provides an easy-to-understand, concise explanation of the FMLA, including which situations it covers, how it relates to other workplace laws, and how organizations can comply.

## Highlights of the 2019 Supplement

Important updates and improvements have been made throughout this edition. Highlights include:

- A “no-fault attendance policy” that effectively freezes, throughout the duration of an employee’s FMLA leave, the number of attendance points that the employee accrued prior to taking his or her leave does not violate the FMLA, provided it is applied in a nondiscriminatory manner, according to an Opinion Letter (FMLA 2018-1-A) issued by the Wage and Hour Division of the Department of Labor. Under the policy at issue, points remain on an employee’s record for 12 months of “active service” after accrual, although the policy does not define “active service”. An employee’s points are then extended for the duration of his or her FMLA leave, meaning an employee returns from FMLA leave with the same number of points that he or she accrued prior to the leave, and the points may remain on his or her record for more than twelve months.
- An organ donation can qualify as an impairment or physical condition that is a serious health condition under the FMLA when it involves either “inpatient care” under § 825.114 or “continuing treatment” under § 825.115, and thus would qualify as a serious medical condition whenever it results in an overnight stay in a hospital, according to an Opinion Letter (FMLA 2018-2-A) issued by the Wage and Hour Division of the Department of Labor.



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- A sales rep who took FMLA leave to attend training for a competing franchise she had set up with her husband was unable to revive her claim her employer interfered with her FMLA rights by offering to let her service existing clients during her FMLA leave so that she could continue to earn commissions, the Fifth Circuit ruled. It was undisputed she was given the option to either take unpaid leave or service her existing accounts while on leave.
- Affirming summary judgment against the FMLA interference and retaliation claims of a 911 dispatcher who was fired after being late repeatedly, the Seventh Circuit found it was not established that she actually suffered from sleep apnea at the time and clearly was not under continuing treatment for it to qualify as a serious health condition.
- Although an employee pointed out that her work location changed from an office to an aviation runway, and that her shift changed to overnight hours after she returned to work following FMLA leave, the Seventh Circuit declined to reach the merits of her FMLA claims, finding that undisputed facts showed her claim was barred by the two-year statute of limitations. Moreover, the appeals court determined that the three-year limitations period for willful violations of the FMLA did not apply because the employee failed to provide evidence that the employer willfully violated her FMLA rights.
- A former product sales manager failed to provide sufficient evidence to create a triable issue of fact that the stated reason for his termination—his low standing in his employer’s evaluative rubric—was pretextual, and the real reason for including him in a RIF was retaliation for his request for FMLA leave, the Sixth Circuit ruled.
- The Third Circuit affirmed dismissal of an employee’s FMLA claim on summary judgment, finding that the FMLA did not cover the sister companies that employed him as an “integrated employer.” Despite being owned by a single person, the sister companies had separate offices, equipment, records, and management, and there was “no evidence that the managers of one entity had any control over the labor decisions of the other entity”.
- **State FMLA laws** – Updates have been made to: Delaware, Maryland, Massachusetts, New Jersey, Puerto Rico, Rhode Island, Tennessee, Washington, and Wisconsin.

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