

BRAIN TEASER

Can I Fire An Employee Once Their FMLA Is Exhausted?

You have an employee who recently went out on FMLA leave for knee surgery. He has been out for over three months and exhausted all 12 weeks of his FMLA. He called and stated he needs additional time off for physical therapy so he can gain full mobility of his knee. It looks like he will need an additional 6 weeks. You can't keep his job open forever. Can't you just terminate the employee now that his FMLA leave is exhausted?

How should you handle this issue?

- A. The Family Medical Leave Act only provides 12 weeks of job protected leave. There is no reason to continue to extend the leave.
- B. Keep on extending FMLA, he has a doctor's note stating he needs more time off .
- C. There is no requirement to extend leave under FMLA, however the employee may be covered under the Americans with Disabilities Act. Under this law, continued leave may be considered a reasonable accommodation.

See below for answer



The correct answer is C.

Explanation:

According to the Equal Employment Opportunity Commission:

Title I of the Americans with Disabilities Act of 1990 covers employers with 15 or more employees, including state and local governments, employment agencies and labor organizations. It prohibits these entities from discriminating against a qualified individual with a disability in job application procedures, hiring, firing, advancement, compensation, job training, and other terms, conditions, and privileges of employment.

A qualified employee with a disability is an individual who, with or without reasonable accommodation, can perform the essential functions of the job in question. Reasonable accommodations may include a leave of absence.

An employer is required to engage in the Interactive Process to determine a reasonable accommodation. There is no specified amount of leave provided by ADA. Each situation must be evaluated for reasonableness, however an indefinite leave of absence is not considered a reasonable accommodation.