

Can an Employer Contact Its Employee While on FMLA?



FMLA Interference. Generally, it appears unlikely that an employer will be considered to have interfered with an employee's right to FMLA leave when the employee is asked to respond to occasional e-mails and take a few phone calls during leave. Courts have held that "[fielding occasional calls about one's job while on leave is a professional courtesy that does not abrogate or interfere with the exercise of an employee's FMLA rights. When limited to the scope of passing on institutional knowledge to new staff, or providing closure on completed assignments, employers do not violate the FMLA by making such calls." *Reilly v. Revlon, Inc.*, 620 F. Supp. 2d 524, 537 (S.D.N.Y. 2009). The Reilly court found that if an employer makes a few brief, infrequent phone calls to an employee on leave asking, for example, where files are saved on a computer or where to find certain things, and the employee is **not** required to produce work product or complete assignments, then the contact is not considered interference with FMLA Leave. Thus, whether or not interference occurred appears to be a practical consideration that looks at the frequency and level of work requested. What we did determine is that an employee CAN'T be asked to come into work to work while on FMLA nor keep up with their work tasks, projects, or take calls from clients. Finally, an employer may not expect the employee to use their own resources to perform business-related tasks.

Now, with the above being quoted, should the employee complain or state that it's against medical recommendation or too fatigued to assist then an employee may be able to support a FMLA violation. Communication and intent is key as an employer certainly doesn't want to come across as coercive and jeopardizing an employee's employment should he or she resist.