

# Handling Employee Requests For Leaves of Absence

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*Karen L. Gabler, Esq. is an employment attorney and co-founder of the LightGabler law firm. With over 30 years of experience, she advises businesses and management personnel on day-to-day employment issues, and defends business owners and supervisors against employee claims. For further information, see [www.LightGablerLaw.com](http://www.LightGablerLaw.com). You can reach Karen via [Email](#) | [LinkedIn](#)*

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**E**mployers faced with an employee's request for time off must consider a variety of issues to determine the rights and benefits available to that employee. In analyzing a request for leave, consider the following issues:

## **1. Is there a protected statutory leave available to the employee?**

The first question employers should consider is whether a legally-protected leave applies to the employee's situation. There are numerous protected leaves available, all of which should be outlined clearly in the company's employee handbook to ensure that employees are aware of their rights and obligations.

In considering whether a protected leave applies to the situation, employers must first look at whether the company is required to offer a particular leave. For example, employers with five or more employees must grant California Family Rights Act leave to eligible employees, and employers with fifty or more employees must grant Family Medical Leave Act leave to employees. Employers with five or more employees must grant Pregnancy Disability Leave, and employers with twenty-five or more employees must reasonably accommodate rehabilitation leave upon an employee's request. Be aware of the leaves that apply to your workplace, and make employees aware of them as well.

Once the employer has determined that the company must offer a particular leave, the next question is whether the employee qualifies for that leave. For example, an employee is eligible for California Family Rights Act leave if the employee has worked for the employer for at least one year and has worked at least 1250 hours in the last twelve months. A disabled pregnant employee is eligible for Pregnancy Disability Leave if a medical professional has certified that the employee requires leave for pregnancy, childbirth or related medical conditions.

## **2. If there is no applicable protected statutory leave, or that leave has been exhausted, can the employee be reasonably accommodated?**

An employee may not qualify for a particular legally-protected leave, or their time under that leave may

have been exhausted. This does not end the inquiry for the employer. The employer's next step is to determine whether the employee can be reasonably accommodated without undue hardship to the company.

The first step in this analysis is to obtain any necessary documentation regarding the employee's need for leave. For example, if the employee has a medical issue, request a doctor's note confirming the need for medical leave, any workplace restrictions or requested accommodations (including a need for leave), and the anticipated duration of those restrictions or accommodations.

Next, have an interactive discussion with the employee to address their need for leave and how that need might be accommodated. This step requires that you actually communicate directly with the employee about their needs as much as reasonably possible and appropriate for the circumstances. Ask the employee for their thoughts about how this might work. Whether or not you agree with the employee, the point is to give them the chance to provide input. Where interaction is impossible or your efforts are ignored by the employee, at least document your efforts to engage in that interactive discussion.

Finally, review whether you can reasonably accommodate the leave without undue hardship to the company. Be sure to err on the side of taking care of the employee, as your decision may be heavily scrutinized later. For example, if the employee requiring leave is your receptionist and you can easily fill the position with a temporary employee, a leave of a year or more might be reasonable because having a temp in the position does not create a hardship. If the employee requiring leave has already taken twelve weeks of California Family Rights Act leave and now requires another three weeks of recovery time before returning, it would be exceedingly difficult for the company to claim that the additional three weeks posed an undue hardship after managing the employee's absence for three months.

If the ongoing absence cannot be reasonably accommodated any longer and you have to fill the position, refrain from immediate termination of the employee unless you already have a replacement in mind. Consider placing the employee on inactive status while you begin searching for a replacement, and notify the employee that if they are released to return to work before you find that replacement, you will gladly reinstate them to the position.

### **3. Document, document, document....**

While going through your leave analysis, be sure to heavily document each step of the process. When the employee gives you notice that a leave is necessary, draft a detailed letter outlining the available leave, the employee's rights, access to benefits, and the employee's obligations while on leave. When a protected statutory leave has been exhausted, draft a further letter outlining the expiration of the protected leave and the company's next steps. Continue documenting any updates or changes to the status.

Throughout the process, keep a detailed chronological log of all communications and events. Note dates on which you spoke with or heard from the employee and the information exchanged. Track the dates on which communications were sent or messages left, and any response received.

In conducting your reasonable accommodation analysis, document efforts to canvas your management team to determine if work is available that would meet the employee's restrictions. The Human Resources Manager may be aware that there is no modified work available, but it is best to send an email to the management team to describe the employee's needs and to ask if any projects exist that would meet those needs. Even if the answer is "no," the fact that you made that effort will help to establish that you were taking every possible step to accommodate the employee.

Lastly, always ensure that your documentation demonstrates your good faith effort to help the employee. Express your sincere concern that the employee is dealing with difficult issues, and note your support and best wishes for a full recovery. Acknowledge that the situation is stressful for the employee, and make the

process as easy as you can for the employee along the way. Even if you believe the employee is making a fraudulent request, maintaining positive and supportive communications will provide the best possible evidence in a disability discrimination case, and won't undermine your position in the slightest. Leaves of absence can be challenging for employers, but they are challenging for employees as well. Start from a place of kindness, and you'll never go wrong.