

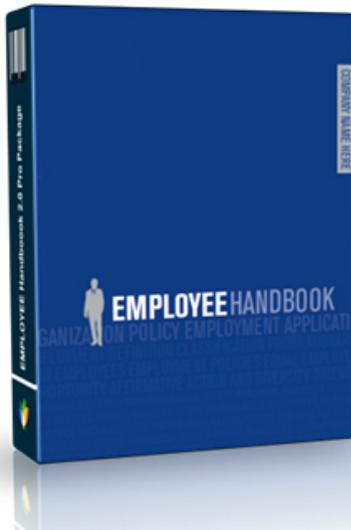


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[Reasons to Read your Employee Handbook: "What do you mean I'm fired because I didn't show up to work? I was in the hospital!"](#)



It's your first day on a new job. You are shown to a desk or conference table and the office manager places a large stack of papers in front of you. Tax forms, personal information forms, and the Employee Handbook. The Handbook can be small or large, and most of the time no one reads it. Nearly all of the time, however, a new employee will sign a piece of paper saying that he or she has read the handbook and understands all that is contained in the handbook. After this point, few employees ever think about what is actually *written* in the handbook until something bad happens. And sometimes not until it's too late.

The Family and Medical Leave Act is available to [qualified employees](#) to allow them unpaid time off to care for themselves and qualified family members with serious health problems, the birth and adoption of children, and several other circumstances. The FMLA prohibits an employer from interfering with a qualified employee's ability to take FMLA leave, and from discriminating and/or retaliating against someone who exercises his or her FMLA rights. Visit the Department of Labor's website on the FMLA for more specifics, [available here](#).

In the case of [serious health problems](#) with the employee or the employee's covered family member (parents, spouses, and children), the FMLA provides protected leave for both situations when the need

for leave is foreseeable and unforeseeable. One of the most commonly litigated issues is whether or not the employer had notice that the employee needs to take FMLA leave.

This is where the handbook comes in. Many, if not all, employers have call-in policies for sick leave and/or reporting tardiness or absenteeism from work. These call-in policies often explain who you need to call (manager, office manager, a 1-800 number to a corporate headquarters), when you need to call (e.g., within the first two hours of the employee's shift), and the method of communication (e.g., telephone call, e-mail, etc).

The FMLA's purpose is to balance an employer's need (and arguably the right) to know whether its employees are showing up to work or just quitting by being a no-call/ no-show, with the employee's need to sometimes be out of work to deal with personal and family emergencies. The FMLA provides covered employees with this flexibility, but apart from pre-approved leave, the FMLA does not allow an employee to just go silent for days on end and then show back up to work to find his job still waiting for him. If an employee needs to use unforeseen FMLA leave, the employer needs to know this and that communication is the employee's responsibility. This does not mean that the employee has to use the magic words, "I need FMLA leave." An employee doesn't even need to know that FMLA exists! This is well established in the regulations and case law.^[1] What this does mean is that, as a general rule, unless there are extreme extenuating circumstances, the employee needs to comply with the employer's call-in policies.^[2] Even if an employee otherwise would qualify, an employer has the legal right to deny FMLA leave when the employee does not follow the standard leave request and call-in policies.^[3]

Here is an extremely important point: merely calling in "sick" will not be sufficient information to trigger FMLA protections. The regulations specifically say so: "Calling in 'sick' without more information will not be considered sufficient notice to trigger an employer's obligations under the Act."^[4] FMLA is not to be used for run of the mill ailments. It is for [serious health conditions](#) and other [qualifying circumstances](#). When calling-in, the employee is obligated to provide the employer with enough information so that the employer can reasonably know that FMLA leave applies to this situation. For example, calling-in and telling your employer "I'm just been admitted to the hospital and I will be here for three days," will in most cases provide enough information to the employer that the employee needs FMLA leave, not just sick leave. Be careful though - if your employer requires that you call in every day you are out, even though you told them the duration of the hospital stay in the initial communication, *you may still be required to follow the call-in procedures for each subsequent day.*

If the circumstances are such that either the employee himself cannot call, and there is no other qualified representative (e.g., spouse, adult family member, or other responsible person) that can do so on his behalf, the regulations allow that the employee follow the employer's call-in procedures as soon as practicable.^[5] What does "practicable" mean? It means that "it generally should be practicable for an employee to provide notice of leave that is unforeseeable *within the time prescribed by the employer's usual and customary notice requirements* applicable to such leave."^[6]

For example, the Tenth Circuit Court of Appeals in [Bones v. Honeywell International, Inc.](#), found that the employer did not interfere with the employee's exercise of FMLA rights where the employee did not "show up to work for three consecutive days and [failed to] notify her supervisors of those absences."^[7] Where an employer's call-in and sick leave request policies do not infringe on FMLA rights by being overly burdensome, employees must follow those policies even when faced with a personal or familial emergency covered by the FMLA. The *Honeywell* case explained that because of this AWOL period the employee would have been terminated "irrespective of whether or not these absences were related to a requested medical leave" as the "request for an FMLA leave does not

shelter [the employee] from the obligations, which is the same as that of any other Honeywell employee, to comply with the Honeywell's employment policies, including its absence policy.”^[8]

So what does this mean for the employer and the employee? Employers may be able to reduce the risk of litigation if they provide specific call-in and absence policies that do not run afoul of FMLA rights, and have policies that are clearly delineated, easily accessible to employees, and applied evenly to all employees. For employees, this means that you should take the time to read these policies early and often. An employee should assume that if an employer has taken the time write out these policies, the employer is willing to enforce the policies. This does not mean that an employee who has not followed the policy and whose FMLA rights were violated does not have a claim, but this is a situation that is best to avoid if possible.

In short, READ THE HANDBOOK, as your employer created it for a reason.

^[1]29 C.F.R. § 825.301(b).

^[2] 29 C.F.R. § 825.302(d) (“Where an employee does not comply with the employer’s usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA-protected leave may be delayed or denied.”).

^[3] *Id.*

^[4] *Id.* at § 825.303(b).

^[5] *Id.* at § 825.303(a).

^[6] *Id.* (emphasis added).

^[7] 366 F.3d 869, 874, 877–78 (10th Cir.2004).

^[8] *Id.* at 878.

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