**The Family Medical Leave Act**

The Family Medical Leave Act was passed in 1993 under President Bill Clinton. Among the findings prompting the Family Medical Leave Act (FMLA) was Congress's belief that "there is inadequate job security for employees who have serious health conditions that prevent them from working for temporary periods." 29 U.S.C. §§ 2601(a)(4). Qualifying employers must investigate into an employee’s right to FMLA when they receive notice of a potentially qualifying event. Pursuant to USC 2615(a)(1), an employee can prove violation of the Family Medical Leave Act if they can establish Defendant interfered with FMLA rights. A potential Plaintiff must show that (1) he/she was an eligible employee; (2) Defendant was an employer subject to the FMLA; (3) he/she was entitled to leave under the FMLA; (4) he/she gave employer notice of her intention to take FMLA leave; and (5) Defendant denied FMLA benefits. Under the fifth element, Plaintiff can alternatively prove that: "the employer has 'somehow used the leave against the employee and in an unlawful manner, as provided in either the statute or regulations”.

**Qualified Employer:**

A qualified employer must have more than 50 employees within a 75 mile radius of where the employee works.

**Qualified Employee:**

A qualified employee must have worked for 12 months and at least 1250 hours to qualify for leave.

**Potential Violations:**

The FMLA prohibits an employer from interfering with an employee's rights under the Act. Under 29 U.S.C. § 2615(a)(1), an employer cannot interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under the FMLA. If an employer interferes with the FMLA-created right to medical leave or to reinstatement following the leave, a violation has occurred. An Employers cannot use the taking of FMLA leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions; nor can FMLA leave be counted under `no fault' attendance policies," 29 C.F.R. § 825.220(c). Thus, a termination based only ***in part*** on an absence covered by the FMLA, even in combination with other absences, may still violate the FMLA

A plaintiff seeking relief under the interference or entitlement theory must show that the violation caused her harm.

**Damages:**

 Where an employer has violated the Act, the employee is entitled to compensatory damages equal to the amount of any wages, salary, employment benefits, or other compensation which he/she was denied or lost as a result of the violation, interest on the compensatory damages, and, unless the court concludes that the employer acted in good faith and reasonably believed it had complied with the Act, liquidated damages equal to the amount of compensatory damages plus interest. 29 U.S.C. § 2617(a)(1)(A). Finally, an employer is liable for equitable relief if appropriate, including reinstatement. 29 U.S.C. § 2617(a)(1)(B).

**Retaliation is actionable:**

A retaliation claim requires that a plaintiff who engages in protected FMLA activity did so with her employer's knowledge, and then was subjected to an adverse employment action that has a causal connection to the invocation of the FMLA leave. [Killian v. Yorozu Auto. Term., Inc., 454 F.3d 549](https://apps.fastcase.com/Research/Pages/Document.aspx?LTID=OZiCYFeLil7CzsB9Pht9kN9V8nbe%2byEhT%2f%2bl7SotYPbnstjf%2f1P0kUFsQohAjNKSqrFvWyZP%2bGew1bmVOsQggSExGMpxyvaxzBd1GeRQt4S4KKTjStLogRnctPiOvFeiDzQ0zV%2bvOKeZ96SX9lL5CrKfFoF8RM6Rprj8yPhZYE8%3d&ECF=Killian+v.+Yorozu+Auto.+Term.%2c+Inc.+%2c+454+F.3d+549), 556 (6th Cir. 2006). The causal connection is that FMLA protection was actively being sought up and through the termination meeting.