



Frequently Asked FMLA/CFRA Questions

Employee Eligibility

- **School teacher:** I need leave to care for my dad, but I am not sure if I qualify under the 1,250 hours of service test. I teach history six hours a day for 180 days a year. Is this enough? *Most likely yes. If you put in unrecorded time after school or at home, you are entitled to a (rebuttable) presumption that you worked 1,250 hours over the previous 12 months.*
- **Almost there:** I was badly injured in a car accident 51 weeks after my job started. I have one week of accrued paid vacation time. Could I take my vacation, satisfy the 12-month employment test and qualify for FMLA/CFRA protections? *Yes. An employee can use accrued leave to satisfy the 12-months of employment test.*
- **Reinstated worker:** We won an arbitration case for a member who was discharged 14 months ago. The arbitrator reinstated her with full back pay. Will she need to work 1250 hours to reestablish her FMLA/CFRA eligibility? *Authorities disagree. The First Circuit Court of Appeals says a worker reinstated by an arbitrator must requalify. The Sixth Circuit Court says that an employee's hours of service include those covered by a back-pay order and therefore it restores FMLA/CFRA eligibility. Some arbitrators say the Sixth Circuit's reasoning is more persuasive.*

Family Care Leave

- **Chicken pox:** Can a parent take leave to care for a child with chicken pox? *Not ordinarily. Chicken pox usually does not qualify as serious because continuing treatment by a health care provider is not required. But under CA's Kin Care law, you can use up to half of your annual sick time accrual for this event. Check your district's leave policy and past practices with Association leadership.*
- **Head injury:** My husband was hit in the head by a golf ball, saw a doctor, and told to stay home for a day. Can I take FMLA/CFRA leave to care for him? *No. An injury that is expected to cause less than four days of incapacity does not qualify as a serious health condition. But under CA's Kin Care law, you can use up to half of your annual sick time accrual for this event.*
- **Child over 18:** My son, age 26, suffered catastrophic injuries in car accident. He is bedridden and needs someone to prepare his meals, drive him to appointments, and give him medicines. Can I take leave to care for him? *Yes. Your son has substantial impairments and needs assistance with several aspects of self-care.*
- **Care for service member:** My daughter was injured while on active duty in the Marines. If I take leave to care for her, will the time be deducted from my 12-week FMLA/CFRA allotment? *Only if you miss work for more than 14 weeks. (NOTE: Service member related FMLA leave is longer.)*

- **Grandchild:** My granddaughter has severe medical problems. Can I take leave to help my daughter care for her? *Yes. Grandchildren are eligible family members under CFRA.*
- **Therapy appointments:** My husband had a stroke and needs therapy twice a week. He is unable to drive or take a taxi on his own. Can I take time from work to drive him? *Yes. But you must attempt to make appointments outside of working hours. If this cannot be done, you must consult with management on a schedule that is not unduly disruptive. Intermittent FMLA can be taken in increments as little as one hour and is not subject to district ½ or full day sick leave policies.*
- **Death of a parent:** A contract allows three days of bereavement leave for the death of a parent. Can I take additional time? *Maybe. FMLA/CFRA leave can be taken after a family member's death if the employee is incapacitated because of depression or other grief-related trauma and is being treated by a health care provider.*
- **Hospital visit:** My father had a stroke and is in the hospital. Can I take leave to visit with him? *Yes, if you are providing emotional care or psychological reassurance, or meeting with his doctors to make decisions about his medical regimen.*
- **Depression:** My mother wants me to stay with her for two weeks. She is very depressed. Does this come under the FMLA/CFRA? *Perhaps. Your mother must be under the care of a provider and must be incapacitated from working or taking part in her other regular activities.*
- **Domestic Partner:** Can I take leave to care for my longtime domestic partner? *Under CA Family Responsibility Act (CFRA), yes, you can.*
- **Indirect care:** Our six-year-old son, Sam, is in the hospital. Am I entitled to time off to care for our other children so that my wife can be with him? *Arguably, yes. In a case that dealt with similar facts, a judge ruled that the FMLA encompasses an absence that is necessary to indirectly provide care for an ill child.*
- **Nervous breakdown:** My teenage son is in the throes of a nervous breakdown. He refuses to go to school and demands that someone be near him at all times. Can I take leave? *Probably yes. An emotional illness being treated by a health care provider usually qualifies as serious. Your presence appears to be necessary for safety reasons.*
- **Spouses working for same employer:** My wife and I work for the same District. Our nine-year-old daughter has been diagnosed with a brain tumor. Can we each take 12 weeks off to care for her? *Yes. The restriction on spouses working for the same employer involves new child and parental care leaves under FMLA, not CFRA, and is not applicable in California.*
- **Filling in:** My sister Carol takes care of our father who has Alzheimer's disease. Carol needs a vacation. Can I fill in for her? *Yes. Leave can be taken to substitute for a regular caregiver.*

- **Surveillance:** While a worker was on leave to care for her child, a Principal saw her drinking in a local pub. Does this provide a lawful basis to fire her? *Not necessarily. A caregiver can take a recreational break when her presence is not necessary. On the other hand, if large amounts of her time are spent in this manner, the employer may be able to establish that the request for leave was fraudulent.*
- **Taking parent on a trip:** I took a four-week leave to care for my terminally ill mother. During one of the weeks, I took her to Las Vegas for a last chance to play the slots. If my district finds out, could I be fired for abuse of leave? *Not if you provided medical, nutritional, hygienic, or other basic care during the trip.*
- **Emergency:** I was called at work and told that my mom had fallen and was in the hospital. I asked my Principal if I could leave at lunch time to be with her. He said no, because no one was able to fill in for me. Is this a violation? *Yes. You gave as much notice as practical in the situation.*
- **Snide comments:** A Vice Principal is known for putting down workers who ask for leave, often making snide comments and insults. Is this allowed? *No. Negative or disparaging comments that discourage an employee from taking leave violate the Act.*
- **Restrictions on activities:** Are there any restrictions on how I spend my time while on leave? *Employers with established policies regarding outside employment while on paid or unpaid leave may uniformly apply those policies to employees on leave. Otherwise, the employer may not restrict your activities. The protections of FMLA/CFRA will not, however, cover situations where the reason for the leave no longer exists, where the employee has not provided required notices or certifications, or where the employee has misrepresented the reason for leave.*
- **Niece in the house:** Can I take time off to care for my nine-year-old niece who is recovering from surgery? She and her mother live with me. *Yes. An employee who provides either day to day supervision or financial support can qualify as a parent under the FMLA/CFRA even if the child also has natural parents.*

Medical Leave

- **Allergy:** I missed work for a day because of an allergic reaction. Is my absence covered by the FMLA/CFRA? *This depends. Since the allergy did not incapacitate you for more than three consecutive days, it does not qualify as a serious temporary condition. However, if you have been seeing a provider for your allergy condition two or more times a year, the condition may qualify as chronic. An employee who suffers from a chronic health condition is entitled to intermittent time off as needed.*
- **Substance abuse:** Does the FMLA/CFRA protect an alcoholic worker who misses work because he drank the night before? *No. The act does not apply to absences, or tardiness caused by using alcohol or illegal drugs.*

- **Incomplete certification:** Management denied my leave because my doctor failed to answer a question on the certification form. Otherwise, the form was fine. Can I be disciplined because the doctor screwed up? *No. When a medical certification lacks sufficient information to verify FMLA/CFRA status, the employer must explain the problem and allow the employee time to obtain a corrected form.*
- **Diagnosis:** I submitted a certification for intermittent leave, but to protect my privacy my provider did not state my diagnosis. Can the District call the doctor to demand it? *No. An employer may not demand that a provider furnish diagnostic information. Nor may it reject a certification solely because it lacks a diagnosis.*
- **Second Opinion:** My certification says I need to stay out of work for three weeks, but the employer obtained a second opinion saying I can work now. Can the District order me to come back? *Not unless it obtains a third opinion breaking the tie.*
- **Anxiety attack:** I have been under treatment for an anxiety condition for several years. Last Monday, my Principal bullied me into a panic attack and I had to leave work early. Can the District count this absence against me? *No. Your absences were due to a flare-up of your chronic health condition.*
- **Doctor's note:** My certification says I will need intermittent leave for up to three days a month because of my chronic intestinal disorder. Can the district require me to submit a doctor's note each time I am absent? *No, but the district can request a recertification no more often than every 30 days or at the end of the current certification. Asking for recertification cannot be used as a harassment tool by the district.*
- **Lifetime certification:** If a doctor certifies that an employee with a back problem will need intermittent leave for the rest of his life, can an employer seek further certifications? *Yes. The employer can request a recertification every six months in connection with an absence.*
- **Late certification:** A teacher was out of work for two weeks due to a nervous condition. On the fifth day, the District demanded a medical certification and gave him 15 days. The worker's report was one day late. If no extenuating circumstances justify the delay, can he be discharged for the absence? *No. According to regulations, an employer may only deny leave protections for absences between the deadline date and the day a late certification is received.*
- **More than 12 weeks:** My 12-week leave is almost over. I will need two more months to get well. Does my employer have to allow me more time off? *This depends. The longest leave required by the FMLA/CFRA is 12 weeks (unless the leave overlaps two leave years). But many contracts allow an employee to request an unpaid leave of absence for compelling reasons. An employer covered by such language may have the right to extend an FMLA leave. Additionally, the federal Americans with Disabilities Act (ADA) and the CA Fair Employment and Housing Act (FEHA) requires employers to provide "reasonable accommodations" to workers with disabilities. A request for further leave may qualify as a reasonable accommodation if the employee has good*

prospects of recovery. According to the Equal Opportunities Commission (EEOC), a rigid policy restricting medical leaves to 12 weeks violates the ADA.

- **Fraud:** Another District employee observed me doing heavy work while on leave for a back problem. Could I be fired? *Possibly. The FMLA/CFRA does not protect workers who request leave dishonestly.*
- **Cosmetic surgery:** Does surgery to remove acne scars come under the FMLA/CFRA? *Probably not. Unless complications develop, or inpatient hospital care is required, cosmetic procedures unrelated to a serious health condition do not qualify for leave.*
- **Release:** Can Administration insist that I sign a release for my medical records before approving my four-week leave request? *No. Your employer may only insist on a provider's certification. If you are seeking benefits under a paid disability plan, however, you must comply with the plan's requirement.*
- **Partial-day leave:** I had to stop work two hours early when my arthritis flared up. How is this counted under the FMLA/CFRA? *If your normal work week is 40 hours, a two-hour absence is 1/20 of a work week.*
- **Holiday during leave:** I took leave from Friday to Wednesday (four work days). Monday was a nonworking holiday. How many days can be counted against my FMLA entitlement? *Three. Holidays that fall in the middle of an FMLA leave are not counted if the leave is for less than one week.*
- **Two-day leave:** I was on leave Thursday and Friday. How much time should be subtracted from my 12-week entitlement? *If your normal work week is five days, two days is 2/5 of a week.*
- **Car accident:** I was involved in a car accident driving to work and suffered a painful whiplash condition. I missed Tuesday and Wednesday the first week and five separate days over the next four weeks. I had over a dozen chiropractic treatments before the condition resolved. Do my absences qualify me for FMLA/CFRA protection? *No. A non-chronic condition does not qualify unless the employee experiences a period of incapacity that lasts for more than three consecutive calendar days. Because your absences were spread out, your condition does not qualify.*
- **Spring Break:** My eight-week medical leave included a two-week spring break. How much time can be deducted from my leave allowance? *Six weeks. Shutdowns of a week or more do not count against an employee's 12-week entitlement.*
- **More absences than certified:** I submitted a medical certification for intermittent leave. My doctor said the expected frequency was three to five absences a month. If I am out on six occasions, can the District count the sixth day against me? *No. Intermittent leave certifications should be read as approximations, not rigid limits. The provider did not say "No more than five." If your District doubts the absence, the proper procedure is to ask for a recertification.*

- **Improper communication with provider:** My District approved me for intermittent leave for an emotional disorder. Two months later, without telling me, the District leave administrator sent a letter to my doctor asking whether I still needed leave. Is this allowed? *No. An employer that needs medical information to determine whether leave is warranted must submit a request to the employee for medical certification or recertification, not approach a provider directly. Moreover, a health care provider cannot release information to an employer without a properly filled out and signed HIPAA authorization form.*
- **Unexpected absences:** Does a medical certification have to be on file for an employee to take leave? *No. The FMLA/CFRA covers circumstances under which a need for leave arises unexpectedly or for the first time.*
- **Ongoing therapy:** May I take leave for visits to a therapist, if my doctor prescribes the therapy? *Yes. The FMLA/CFRA permits you to take leave to receive “continuing treatment by a health care provider,” which include recurring absences for therapy treatments such as those ordered by a doctor for physical therapy after a hospital stay, or for treatment of severe arthritis, for example.*

New Child Leave

- **State Law:** California state law allows female employees to take paid maternity leave. Can I use it to extend my 12-week FMLA leave? *No. Leave taken under one law counts as leave under the other. However, since CFRA does not recognize Pregnancy Disability Leave (PDL), time taken under PDL (both before and after the birth of a child), cannot count against your CFRA leave for baby bonding time.*
- **Same-sex relationship:** A member is involved in a same-sex relationship with another woman. The members’ partner is having a child in three months. Can the member take time off when the baby is born? *Yes. If the member will be co-parenting the child, she can take leave for the birth of the child and for bonding. The member may also take FMLA/CFRA leave to care for the child if she has serious health problems as she grows up.*
- **Unmarried father:** My girlfriend is expecting our child. Can I take FMLA/CFRA leave when the baby is born? *Yes. A father can take leave to bond with a newborn child whether or not the parents are married or living together.*
- **Big day:** Can I take leave to be with my wife when she gives birth? *Yes, if you give notice as soon as possible.*
- **Substitution:** Can the District make me use my paid sick leave during my new child leave? *Most likely, yes. Check your district policies and contract. While this is a mandatory subject of bargaining, most districts have long standing policies that are outside the reasonable timeframe to demand to bargain. If policies change, however, demand to bargain.*
- **Early leave:** I am due in a month. Can I begin my leave now? *Not necessarily. Pregnancy is only a leave-qualifying condition when it causes incapacity. If you are able to work until your due date,*

you are not entitled to FMLA/CFRA leave. Conversely, if you need to stop work because of your medical condition or to ensure a safe delivery, your employer must allow you time off under Pregnancy Disability Leave (PDL). PDL is for a total of four months and is concurrent with FMLA. PDL can be used after the birth of a child (up to six weeks for a vaginal birth and eight weeks for a C-Section). Because CFRA does not recognize pregnancy as a qualifying medical condition, the full 12-week leave will be available for new mothers AFTER the completion of the pregnancy disability leave. Of course, nothing prevents you from asking for an early leave even if you are able to work. If your employer agrees, you will still be entitled to a 12-week bonding leave when your baby is born.

Health Benefits

- **Life insurance:** Does a District have to continue life and disability insurance during leaves? *No, unless required by the contract or if such benefits are provided to employees who take non-FMLA/CFRA leaves.*
- **“I won’t be coming back”:** Does a District have to continue health insurance contributions for a leave-taker who announces his resignation during a leave? *No. Unless otherwise provided by the contract, a District may discontinue insurance payments if an employee resigns during a leave or announces an intent not to return.*
- **Extending leave:** If an employee asks to extend a medical leave beyond 12 weeks and is approved, does the employer have to continue paying for group health benefits? *Not unless required by the contract.*

Employee Notices

- **Constructive notice:** The District says I failed to give sufficient notice when I took time off to care for my daughter. When I called in, I just said “family illness.” Everyone, including my Principal, knew my daughter was in intensive care. Can the District count the day against me? *No. When a serious medical condition is widely known, an employer can be presumed to be aware that an employee needs FMLA/CFRA leave. The courts call this “constructive notice.”*
- **Family problem:** If my daughter suffers a seizure, can I simply call in and say, “I cannot come to work because of my child’s health problem?” *No. Your note does not alert the District that your child is suffering from an FMLA/CFRA-eligible health condition. You do not need to share the condition, but you should note, “I cannot come to work because of my child’s FMLA/CFRA-covered health problem today.”*
- **Status reports:** Can an employer require employees who are on leave to call in periodically? *Your employer may ask you questions to confirm whether the leave needed, or taken qualifies for FMLA/CFRA purposes, and may require periodic reports on your status and intent to return to work after leave.*
- **Request for extension:** I am on an approved three-week family care leave. It looks like I will need an additional week. Does the District have to grant me an extension? *Yes, unless you have used*

up your 12-week entitlement. You must give as much advance notice as possible and, if requested, provide a new certification from your family member's provider.

- **Notice by relative:** Can an employee's spouse call the District to report an FMLA absence? *Yes. If an employee is unable to call in, notice can be given by a spouse, family member or other responsible party.*
- **Doctor's note:** If an employee has a medical certification on file, can an employer demand a doctor's note verifying that an absence is related to the condition? *No. A doctor's note is not required for every absence, but if the employer is suspicious of the leave, they can request periodic recertification.*
- **Medical Records:** Do I have to give my employer my medical records for leave due to a serious health condition? *No. You do not have to provide medical records. You must, however, provide a medical certification confirming that a serious health condition exists.*

Employer Notice Duties

- **Waiting game:** I have been caring for my mother for five weeks but have yet to receive an FMLA/CFRA notice from my District. Do I need one to guarantee my reinstatement rights? *No. An employer's failure to designate an FMLA/CFRA leave does not deprive a worker of the Act's protections.*
- **Unwanted designation:** While on workers' compensation I received a letter that the District was counting the time as concurrent FMLA/CFRA leave and subtracting it from my FMLA/CFRA entitlements. Can they do this even though I never asked for FMLA/CFRA, didn't want to use FMLA/CFRA, and never filled out any FMLA/CFRA paperwork? *An employer cannot force an injured employee to take time off under FMLA/CFRA. In instances where both FMLA/CFRA and Workers' Compensation benefits apply, the employer must provide leave under whichever best benefits the employee.*
- **Denials:** Can the District determine that a medical absence is not FMLA/CFRA-qualifying? *No, not if the employee is eligible for the leave and provided sufficient notice of the leave, when foreseeable (at least 30 days in advance).*

Return to Work

- **No longer needed:** A worker was refused reinstatement because, "while you were out, we learned that your position was no longer needed." Is this an FMLA/CFRA violation? *Yes. Other than discovered misconduct, a District may not eliminate a leave-taker's position based on information gained from the employee's absence. Additionally, Ed Code provides the process for layoffs and elimination of positions. The elimination of a position does not necessarily mean a layoff for the employee. Contact CTA Primary Contact Staff for assistance.*
- **Misconduct:** After a teacher went out on adoption leave, her replacement reported that the leave-taker had screwed up many of her assigned duties, such as grading. If the District discharges the teacher, could she bring a reprisal claim under the FMLA/CFRA? *Probably not,*

unless she can prove that management was aware of her problems before she went on leave. Contact CTA Primary Contact Staff for assistance.

- **Parent complaint:** A teacher took intermittent FMLA on three occasions. After his last absence, the District transferred him to a new school. The District says an important parent demanded that the teacher be moved because he missed too many days. Is the transfer legal? *No. An FMLA/CFRA leave-taker must be allowed to return to his regular job, even if a parent demands otherwise.*
- **Different Duties:** When a teacher returns from leave, her Vice Principal told her that another teacher would be taking over some of her teacher responsibilities, as he had during her leave. These include teaching her most interesting classes. Is this allowed? *No. Although a leave-taker does not have to be returned to the exact job she held before a leave, her duties must be substantially similar.*
- **Workers' comp absence:** A teacher broke her arm on the job and received workers' compensation for six weeks. The employer did not designate the absence as FMLA. When the employee returned, he was assigned a different assignment on a different campus. The District says this is allowed because the state workers' compensation law does not require that a worker be returned to his original position. Do we have a case? *Yes. When an absence qualifies under FMLA/CFRA, the Acts applies whether or not the teacher designated the absence as FMLA/CFRA.*
- **Early return:** I was granted a three-week leave to care for my wife. If her condition improves, can I come back early? *Yes, but your employer can require you to give reasonable notice, generally at least two business days.*

Grievances

- **Employee exceeds leave entitlement:** A teacher used up her 12-week leave allowance caring for family members. She was then absent on two occasions because of her own medical condition. Can the employer impose discipline? *Not if she has few other unexcused absences. The FMLA/CFRA days cannot be counted and her non-FMLA/CFRA absences must be sufficient to justify discipline under the attendance policy.*
- **Caught raking leaves:** A teacher took five days of leave because of back pain. On the second day, a District employee filmed her doing extensive yard work. What arguments can we raise if the District fires her for misuse of leave? *One argument is that her home activities did not conflict with her doctor's medical restrictions. Another is that despite being able to do yard work, she could not perform the essential duties of her position. For example, her job might require standing on a hard, concrete floor in the wood shop. If she was on a narcotic painkiller, she might not be able to operate woodworking tools. An employee does not have to be totally disabled to take advantage of FMLA/CFRA.*
- **Give me a break:** Despite approving a two-week family care leave, the Superintendent charged an employee with abuse because a Supervisor saw him jogging in a park. Do we have a case?

Yes, if this is all they have. A leave-taker does not have to provide care 24/7 and can take short rest and recreation breaks when his presence is not necessary.

- **Post-discharge surgery:** A school nurse was fired for reaching the absence limit. Her last absence was because of intense shoulder pain. A week after discharge, she was diagnosed with a torn rotator cuff and underwent surgery. Can we argue that her last absences were FMLA/CFRA-protected? *Yes. The leave covers absences that ripen into serious health conditions after discharge.*
- **Last-chance agreement:** To settle a grievance, the Union agreed that if an employee missed work for any reason during the next six months, he could be discharged. Does this allow the company to fire the worker for an FMLA/CFRA absence? *No. FMLA/CFRA rights cannot be waived, even if the worker signs a last-chance agreement.*
- **Prior discipline:** A worker was fired for insubordination. The District says the decision was based on progressive discipline and cited a suspension three months earlier for absenteeism. If we go to arbitration, can we argue that because the suspension violated the Acts, the termination lacks just cause? *The argument makes sense, but most arbitrators will refuse to open up prior discipline. The employee may have better luck suing in court.*
- **Tardiness:** A teacher arrived 30 minutes late because his back locked up and he needed a hot bath to get moving. He is certified to take intermittent leave for his condition. Can the District discipline for the tardy? *No, if the teacher followed the district's call-in policy and explained that he would be late because of his back. US Department of Labor regulation provide that intermittent leave can be taken for less than a day and this may include an occasional late arrival.*
- **Diversion attempt:** If a worker being investigated for sexual harassment goes on a leave for stress, will he be immune from disciplinary action? *No. An employer can impose discipline during an FMLA/CFRA absences if the reason is unrelated to the absence.*
- **Job abandonment?** A teacher was called during work and told that his father, who has cancer, was failing fast. The teacher asked his Principal if he could leave work one hour early to meet with this father's doctor. Although the Principal refused the request, the teacher got another teacher to cover his class and left on his own. The next day, he was suspended for five days for job abandonment. Does he have a case? *Yes. The teacher qualified for family care leave and gave as much advance notice as was practical under the circumstances. The District violated the law by refusing to allow him to leave early and disciplining him for taking a protected leave.*

US Department of Labor (DOL)/CA Department of Civil Rights Complaints and Lawsuits

- **Should I file a DOL complaint?** I was fired for taking time off. My Association is taking my case to arbitration. Will my chances be improved if I file a complaint with the feds or the state? *Not necessarily. The Wage and Hour Division at the DOL and the CA Department of Civil Rights has limited resources. If your Association is pursuing the matter under a collective bargaining agreement, the agency may decline to take on the matter.*

- **Damage for emotional distress:** Can a worker who is denied leave sue for emotional distress? *Courts do not award emotional distress damages in FMLA/CFRA cases. However, it is sometimes possible to join an FMLA/CFRA claim with a claim under the Americans with Disabilities Act, which permits recoveries for mental suffering.*
- **Double damages:** Are double damages awarded in all successful leave lawsuits? *No. Although a presumption favors doubling, the penalty does not apply if the employer can establish that its failure to obey the law was in good faith and based on reasonable grounds.*
- **Union lawsuit:** Can a Union bring an FMLA/CFRA lawsuit on behalf of its' members? *It appears not. Courts have only allowed individuals to sue and have found that Unions do not have standing to sue.*
- **Constructive discharge:** A worker needed time off to care for her husband. She asked several times, but her Principal was hostile, made disparaging remarks, and never gave permission. Fed up, the teacher quit. Can she sue under the FMLA/CFRA? *Yes. Employees who quit work because interference with leave rights can sue for monetary damages under a theory called "constructive discharge." The teacher must show that management's conduct was so intolerable that a reasonable employee would have felt compelled to resign.*
- **Breach of privacy:** After receiving an FMLA/CFRA certification, a Principal told several other teachers that the worker had breast cancer. Can the worker sue? *Yes. Medical information obtained for FMLA/CFRA purposes must be kept confidential.*
- **Retaliation:** A teacher was fired for "poor work." She is convinced that the true reason is because she took leave for several weeks during the year. Could she sue in court for double back pay? *Yes. An employer may not punish a worker for FMLA/CFRA absences. The teacher, however, must be able to convince a judge or jury that the real motivation for her discharge was FMLA. The following evidence supports a claim of retaliation:*
 - *Closeness in time between the FMLA/CFRA absences and termination*
 - *A pattern of harassment, such as close supervision or misapplication of company policies*
 - *Hostile comments by Principals or other administrators*
 - *The inability of the employer to prove its' claim against the teacher*
- **Complaint about leave:** Can my employer fire me for complaining about a violation of FMLA/CFRA? *No, nor can the employer take any other adverse employment action on this basis. It is unlawful for any employer to discharge or otherwise discriminate against an employee for opposing a practice made unlawful under FMLA.*