

**HR Tip of the Week**  
**P•A•S ASSOCIATES**  
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## **Dialogue with Employee Key Part of Deciding Whether to Extend Leave**

*Our employee has used up all of her Family Medical Leave Act (FMLA) leave, but called today to request an extension of time. Do we have to grant the extension, or can we terminate her employment?*

It depends. The Equal Employment Opportunity Commission (EEOC) has in recent years issued guidelines stating that an extension of FMLA is one of the “reasonable accommodations” contemplated under the Americans with Disabilities Act (ADA).

The next question asked is “how much time”? This is not an easy answer, because the ADA does not define precisely what a reasonable accommodation is.

### **Factors to Consider**

Several factors are considered in making this determination.

How much more time is being requested? Most companies with 50 and more employees (the minimum size for the FMLA to apply) can accommodate a few days, or even a week or two.

If an employee is requesting several more months, however, matters get more complicated. What’s reasonable for an employer with 800 employees might not be reasonable for a company of 52 employees. Therefore, the size of the company is yet another factor.

Another consideration is how sensitive the employee’s job is. Is it easy to shuffle her job duties to others, versus an important job that is causing strain on the company due to her prolonged absence?

Additionally, some companies are seasonal in nature, and an employee’s absence during a busy time of the year might be difficult to accommodate. For example, think of an accounting business during tax season.

What is critical for an employer to realize is not to have a knee-jerk reaction to such a request. These are very serious issues, and employers should work hard to accommodate the requests. It is much easier to accommodate an employee’s request for more time versus defending a lawsuit based on denial of such a request.

## Interactive Dialogue

The employer should enter into an interactive dialogue with the employee, as is contemplated by the ADA. The law wants employers to evaluate leave requests on a case-by-case basis, not point to a “line in the sand” in the belief that the employer can automatically terminate the employee.

Indeed, if an employee has a serious health condition that also constitutes a disability as defined by Government Code Section 12926 and cannot return to work at the conclusion of her California Family Rights Act leave, the employer has an obligation to engage that employee in an interactive process to determine whether an extension of that leave would constitute a reasonable accommodation under the Fair Employment and Housing Act.

If the employer does indeed believe it cannot grant the leave request after discussing these factors with the employee, it may be advisable to consult with legal counsel to affirm the decision.

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