

Important notice: Legal Momentum has developed this sample demand letter as a model that may be useful for individuals seeking to enforce their legal rights. However, because laws and legal procedures frequently change and are subject to differing interpretations, Legal Momentum cannot ensure that the information in this letter is current, nor be responsible for any use to which it is put. Before relying on this information, you are advised to consult an attorney or appropriate agency about your legal rights in your particular situation. If you need assistance in finding a lawyer, contact Legal Momentum, the bar association in your state, your local legal services office, domestic or sexual violence coalition, or service provider.

Sample Letter Challenging a Firing or Other Job Action Under the Family and Medical Leave Act (FMLA)

What rights does this letter assert? This letter is drafted to challenge a firing for absences or assert other rights under the Family and Medical Leave Act (FMLA). For more information about the FMLA, see Legal Momentum’s “Know Your Rights: Medical Leave for Survivors and Family Members.” This letter may also be a helpful model for asserting rights under a state or local medical leave law or similar provisions in a personnel policy or collective bargaining agreement. There are also state and local laws that provide time off specifically to victims of domestic or sexual violence to address a range of issues related to the violence. For more information on these laws, see Legal Momentum’s State Law Guide “Time Off from Work for Victims of Domestic or Sexual Violence” or our sample letter asking for time off under those laws.

What employers are covered by the law? FMLA applies to employers anywhere in the United States. The employer must have at least fifty employees at your workplace or within 75 miles of your workplace. To be protected by the law, you must have worked for your employer for at least a year and have worked at least 1,250 hours (an average of 25 hours per week) in the year before you ask for leave.

Whom should you send your letter to? You should send the letter to your supervisor, human resources representative, or someone else with authority to make accommodations for you, give you time off, or make decisions regarding your employment.

How should you deliver the letter? You may hand deliver the letter or you may mail it. If you mail the letter, it’s a good idea to mail it certified with return receipt requested or by an express mail service that can give you a record of receipt.

What records should you keep? You should keep a copy of the letter you send and record of how and when you delivered it. You should keep a copy of any written response you receive. If a representative of your employer talks to you about your letter, you should take notes on this conversation (either during the conversation or immediately after the conversation) and keep a copy of these notes. Your notes should be as detailed as possible. They should include the date of any conversation, what you said, what your employer said, and the date that you wrote up the notes. Also, if you feel like you are being discriminated against at work because of your request for leave or your serious health condition, you should keep records of exactly what happened (including notes on specific words said to you, if possible).

Are there risks to sending a letter? Yes, sometimes employers respond to a request for time off or a complaint about a job action by firing or otherwise retaliating against the employee (if you have not already been fired). This is usually illegal. However enforcing the law might be too difficult or time consuming an option for you right now. It might be more important to know you can keep a steady paycheck right now. Additionally, if disclose you are a survivor of domestic violence, sexual assault, or stalking to anyone at work, this information may not be kept confidential. Also, your employer might pressure you to take certain actions to address the situation (such as get a protective order), which may not be right for you at this time.

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[Insert Date]

[Insert your supervisor or human resource representative's name]

[Insert your employer's name]

[Insert your employer's address]

Dear [Insert name]:

I am writing regarding your recent decision to [insert details about the job action you are complaining about; for example, "your recent decision to fire me from my job" or "your recent decision to write me up for absences" or "your recent decision to put me on probation"] at [insert your employer's name]. I have obtained information about my legal rights and I believe that your termination of me from my job was in violation of my rights under the Family and Medical Leave Act.

[Insert details regarding situation. An example follows.] As you know, I have been a loyal employee of [insert your employer's name] for the last two years. As your primary receptionist, I have received nothing but positive employment evaluations from you. Over the last six months, I have been forced to use my vacation and sick leave to attend to personal issues and injuries. Most recently, I missed a week of work to heal from a bruised rib and other injuries. I called you the morning of April 4, 2005 before my shift to inform you of my need for leave and I faxed you a note from my doctor the same day indicating that I was unable to work for the week. Nonetheless, when I returned to work the following week, you informed me that I was fired and handed me my termination letter. This letter stated that you fired me for excess absences from work. I believe that your termination of me was in violation of my rights and I would like to be reinstated as soon as possible and to receive compensation for my lost wages.

The Family and Medical Leave Act ("FMLA") covers employers like [insert your employer's name] that employ fifty or more employees. Eligible employees under the FMLA are employees who have worked for the employer for at least a year and at least 1250 hours in the last 12 months, which I have. An employee may take job-guaranteed leave under the FMLA for a "serious health condition" that makes her unable to perform her job. In April, I went to the emergency room and saw my doctor to receive treatment for my bruised rib and other injuries. I was prescribed pain killers and other prescription medication and was directed by my doctor not to work for a week. This qualifies as a "serious health condition" under the act. It is illegal for an employer to punish or retaliate against an employee for taking FMLA-qualifying leave. Because

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the leave that I took was FMLA-qualifying, your decision to terminate me for taking this leave is in violation of my rights under the FMLA.

This is a very private issue and it is very important to me that my situation be kept confidential. I understand that you may need to consult with a limited number of other managers about my specific situation, but I request that you let me know whom you speak with. Additionally, I expect that, in compliance with the law, you will only discuss my request for time off with other managers who need to know about the situation, and that you will ensure that they too keep this information confidential.

As you might imagine, I would prefer to address this situation informally rather than by filing a claim with the U.S. Department of Labor or pursuing a claim in federal court. I would like to be returned to my job and receive back pay as soon as possible. Please contact me by *[insert date in one week]* at *[insert phone number]*. If I do not hear from you I will take further action to enforce my rights to the full extent of the law.

Sincerely,

[Insert name and address]