

# HR QUESTION ? of the month



## *Is voluntary attendance during FMLA allowed?*

**Question:** We have an employee on FMLA who is required to have an updated CPR certification for licensure purposes. As an employer, we outsource CPR vendors who come into our clinics to recertify employees. This employee is on maternity leave and fully released to return to work with no restrictions, however the employee is on her last weeks of child bonding. The employee wishes to come in to one of our clinics to recertify CPR. Should we allow the employee to take the CPR course even though the employee is on FMLA? Would we be violating the employee rights even though it's the employee who wishes to attend the CPR course?

**Response:** If the employer agrees to it, we are not aware of any law that would prevent the employer from allowing the subject employee to voluntarily return to work for the CPR certification course prior to the conclusion of her Family and Medical Leave Act (FMLA) leave. It is up to the employer to decide whether to require that she conclude her FMLA leave as of that time or resume the leave when the CPR training ends.

Employees who are eligible for FMLA leave and who seek to use it in connection with bonding with a newborn or newly-adopted child or a child placed in foster care can take as much leave, up to 12 weeks, as they so choose (assuming they have not previously utilized any FMLA leave in the same 12-month period). Leave must be provided continuously when it is taken for this purpose, but employers are not required to provide leave on an intermittent or reduced schedule basis for this reason unless the employer agrees to do so. Thus, if the subject employee is presently on continuous FMLA leave to bond with a newborn baby and is medically cleared to return to work, then if she would like to return to work to participate in the CPR class, we are not aware of any law prohibiting her from doing so. If she wishes to resume whatever remaining FMLA she may have after the course completes, she can do so only if the employer agrees, because this arguably would be in the nature of intermittent leave under the Act (see page 52 at <https://www.dol.gov/whd/fmla/employerguide.pdf>). If the employer agrees to the arrangement, it should be cognizant of the precedent it is setting, as others may want – and expect – a similar accommodation in the future. (We assume from the inquiry this is the first situation of its kind. If it is not, the employer should follow its past practices to avoid discrimination and retaliation concerns here.)

As a best practice the employer should secure documentation from the employee indicating that it was her choice to return to work for the CPR class and that this is not something the employer forced or required her to do while she was otherwise on FMLA leave.

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