

**4 PJI 16 | FAMILY AND MEDICAL LEAVE ACT - INTERFERENCE CLAIMS (NEW)**  
**- 29 USC §2601-2654**

In this case, [Plaintiff] claims that [he/she] was entitled to a leave of absence from work under a federal law called the Family and Medical Leave Act, also known as the FMLA, and that [Defendant] interfered with, restrained, or denied [his/her] entitlement to a leave of absence.

Under the FMLA, an eligible employee may take up to 12 weeks of leave during any 12-month period for [the employee's own serious health condition/the birth, placement or adoption of a child/the care of a spouse, child, or parent who has a serious health condition/active-duty orders/the care of a covered service member]. This leave is called FMLA leave.

The FMLA also gives the employee, after [his/her] leave, the right to be restored by the employer to the position held when the leave began, or to be given an equivalent position. It is unlawful for an employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise any of these rights.

To succeed on [his/her] claim against [Defendant], [Plaintiff] must prove each of the following facts by a preponderance of the evidence:

First: [Plaintiff] was eligible for FMLA leave;

Second: [Plaintiff] was entitled to FMLA leave;

Third: [Plaintiff] gave [Defendant] proper notice of [his/her] need for leave; and

Fourth: [Defendant] [describe interference, e.g., refused to allow leave, refused [Plaintiff] reinstatement, discharged [Plaintiff], failed to maintain benefits].

[In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.]

For the first element, [Plaintiff] was "eligible" for FMLA leave if:

(a) [Plaintiff] worked for [Defendant] for at least 12 months before the date any FMLA leave was to begin, and

(b) [Plaintiff] worked for [Defendant] for at least 1,250 hours during the 12-month period before the date any FMLA leave was to begin.



For the second element, [Plaintiff] was "entitled" to FMLA leave if [he/she] had an FMLA-qualifying reason. [A serious health condition that prevented [Plaintiff] from performing the functions of [his/her] job/The birth, placement or adoption of a child/The care of a spouse, child, or parent who has a serious health condition/Following active-duty orders/The care of a covered service member] is an "FMLA-qualifying reason."

[A "serious health condition" is an illness, injury, impairment, or physical or mental condition that involves either inpatient care in a hospital, hospice, or residential medical facility, or continuing treatment by a healthcare provider. Ordinarily, unless complications arise, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, and other similar conditions do not meet the definition of a "serious health condition" and do not qualify for FMLA leave.]

For the third element, [Plaintiff] "gave proper notice" to [Defendant] of [his/her] need for FMLA leave if [he/she] notified [Defendant] of the need to take FMLA leave in a timely manner and in a way that alerted [Defendant] that [his/her] absence might qualify as FMLA leave - even if [Plaintiff] did not expressly mention the FMLA.

If [Plaintiff] knew of the need for leave more than 30 days before the leave was to begin, [he/she] was required to give [Defendant] notice at least 30 days before the leave was to begin. If [Plaintiff] knew of the need for leave less than 30 days before the leave was to begin, [he/she] was required to give [Defendant] notice as soon as was reasonably possible.

For the fourth element, you must determine whether [Defendant] [describe interference].

[Including Affirmative Defense: If you find that [Plaintiff] has proved each element [he/she] must prove, you must decide whether [Defendant] has established [his/her/its] affirmative defense.

It is lawful for an employer to [describe interference] for reasons unrelated to an employee's [FMLA leave/attempt to take FMLA leave]. To establish its affirmative defense, [Defendant] must prove by a preponderance of the evidence that [he/she/it] [describe interference] for reasons that were unrelated to [Plaintiff]'s [FMLA leave/attempt to take FMLA leave]. Put another way, [Defendant] must prove that [he/she/it] would have [describe

interference] even without the [FMLA leave/attempt to take FMLA leave].

If you find that [Defendant] established [his/her/its] affirmative defense, you will not decide the issue of [Plaintiff]'s damages. But if you find that [Defendant] has not established [his/her/its] affirmative defense, you must decide the damages issue.]

[Without Affirmative Defense: If you find that [Plaintiff] has proved each element [he/she] must prove, you must decide the issue of [Plaintiff]'s damages.]

The measure of damages for [Plaintiff] is either lost wages and benefits or other expenses incurred because of [Defendant]'s FMLA violation. [Plaintiff] can recover lost wages and benefits, or [he/she] can recover other expenses incurred because of [Defendant]'s actions - but not both.]

If [Plaintiff] proved that [he/she] lost wages or benefits because of [Defendant]'s FMLA violation, then [Plaintiff] may recover net lost wages and benefits from the date of [describe interference] to the date of your verdict.

If you find that [Plaintiff] did not directly lose pay or benefits because of [Defendant]'s FMLA violation, then you may award [Plaintiff] the actual monetary loss that directly resulted from [Defendant]'s FMLA violation. This amount of damages cannot exceed [12/26] weeks of [Plaintiff]'s wages or salary.

[Mitigation of Damages: You are instructed that any person who claims damages as a result of an alleged wrongful act on the part of another has a duty under the law to "mitigate" those damages. For purposes of [name of plaintiff's] claim for lost pay, the duty to mitigate damages requires [Plaintiff] to be reasonably diligent in seeking substantially equivalent employment to the position [he] [she] held with [Defendant]. To prove that [Plaintiff] failed to mitigate damages, [Defendant] must prove by a preponderance of the evidence that: (1) work comparable to the position [Plaintiff] held with [Defendant] was available, and (2) [Plaintiff] did not make reasonably diligent efforts to obtain it. If, however, [Defendant] shows that [Plaintiff] did not make reasonable efforts to obtain any work, then [Defendant] does not have to prove that comparable work was available.

If you find that [Defendant] proved by a preponderance of the evidence that [Plaintiff] failed to mitigate damages, then you should reduce the amount of [Plaintiff]'s damages by the amount



that could have been reasonably realized if [Plaintiff] had taken advantage of an opportunity for substantially equivalent employment.]

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**SPECIAL INTERROGATORIES TO THE JURY**

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Do you find from a preponderance of the evidence:

1. That [Plaintiff] was eligible for FMLA leave?

Answer Yes or No \_\_\_\_\_

If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

2. That [Plaintiff] was entitled to FMLA leave?

Answer Yes or No \_\_\_\_\_

If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

3. That [Plaintiff] gave [Defendant] proper notice of [his] [her] need for leave?

Answer Yes or No \_\_\_\_\_

If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

4. That [Defendant] [describe interference]?

Answer Yes or No \_\_\_\_\_

If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.



[5. That [Defendant] [describe interference] for reasons that were unrelated to [Plaintiff]'s [FMLA leave/attempt to take FMLA leave]?

Answer Yes or No \_\_\_\_\_

If your answer is "Yes," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "No," go to the next question.]

6. That [Plaintiff] should be awarded damages?

Answer Yes or No \_\_\_\_\_

If your answer is "Yes," in what amount? \$ \_\_\_\_\_

SO SAY WE ALL.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Foreperson's Signature

*((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)*



## Annotations and Comments

### I. Cause of Action

The Family and Medical Leave Act (“FMLA”), 29 U.S.C. §2601 et seq., provides for several causes of action, including an interference claim, in which an employee asserts that his employer denied or otherwise interfered with his rights under the FMLA, and a retaliation claim, in which an employee asserts that his employer took an adverse employment action against him because he took an action protected by the FMLA.

Pattern Instruction 4.16 is intended to be used for FMLA interference claims. Pattern Instruction 4.16 is not intended to be used for FMLA retaliation cases; for such claims, please refer to Pattern Instruction 4.15., *supra*. If a plaintiff brings alternative claims for FMLA interference and FMLA retaliation based on the same adverse employment action, Pattern Instructions 4.15 and 4.16 may be merged, though the court should be careful to explain the different causation standards and should be aware of the differences in the availability of a causation affirmative defense. For a discussion of the causation standards and affirmative defense availability, please see annotation §II(H) to Pattern Instruction 4.15, *supra*, and annotation §III(B) to Pattern Instruction 4.16, *infra*.

### II. Distinction Between FMLA Interference and FMLA Retaliation Claims:

To state an interference claim, the employee must show that his employer interfered with or denied him an FMLA benefit to which he was entitled. *O’Connor v. PCA Family Health Plan, Inc.*, 200 F.3d 1349, 1353-54 (11th Cir. 2000). The employee “does not have to allege that his employer intended to deny the right; the employer’s motives are irrelevant.” *Strickland v. Water Works & Sewer Bd.*, 239 F.3d 1199, 1208 (11th Cir. 2001). In contrast, an FMLA retaliation plaintiff must prove that his employer retaliated against him because he engaged in activity protected by the FMLA. See *Spakes v. Broward Cnty. Sheriff’s Office*, 631 F.3d 1307, 1309-10 (11th Cir. 2011) (per curiam) (noting that an FMLA retaliation plaintiff has an increased burden of proving causal nexus that an interference plaintiff does not have).

### III. Elements and Defenses

#### A. Elements Common to Interference and Retaliation Claims

To prevail on an FMLA interference claim or an FMLA retaliation claim, the plaintiff must be eligible for FMLA leave, be entitled for FMLA leave, and give the employer proper notice of the need for FMLA leave. For a discussion of these elements, please see the annotations and comments following Pattern Instruction 4.15, *supra*.

A “pre-eligible” employee may state an interference claim based on interference with “post-eligibility” FMLA leave. *Pereda v. Brookdale Senior Living Cmty., Inc.*, 666 F.3d 1269, 1275 (11th Cir. 2012) (holding that “a pre-eligible employee has a cause of action if an employer terminates her in order to avoid having to

accommodate that employee with rightful FMLA leave rights once that employee becomes eligible”).

#### B. “Lack of Causation” Affirmative Defense<sup>9</sup>

To prove an FMLA interference claim, a plaintiff does not have to prove a “causal nexus” between the FMLA leave and the employer’s action. Spakes v. Broward Cnty. Sheriff’s Office, 631 F.3d 1307, 1309-10 (11th Cir. 2011). Rather, the plaintiff must prove “that he was denied a benefit to which he was entitled under the FMLA.” Id. at 1309. “[T]he causal nexus element is the “increased burden” that a retaliation plaintiff faces that an interference plaintiff does not.” Id. at 1310. Eleventh Circuit “cases make clear that a causal nexus is not an element of an interference claim, but that the employer can raise the lack of causation as an affirmative defense.” Id. at 1310. Therefore, if the employee alleges that the employer interfered with the employee’s FMLA rights, the employer may prevail if it shows that the employer would have taken the same action – such as refusing to reinstate the employee following FMLA leave – even if the employee had not taken FMLA leave. Id.; accord Schaaf v. Smithkline Beecham Corp., 602 F.3d 1236, 1241 (11th Cir. 2010); Strickland v. Water Works & Sewer Bd., 239 F.3d 1199, 1208 (11th Cir. 2001) (“[I]f an employer can show that it refused to reinstate the employee for a reason wholly unrelated to the FMLA leave, the employer is not liable.”).

#### IV. Remedies

For a discussion of the remedies available to a plaintiff who prevails on an FMLA claim, please see the annotations and comments following Pattern Instruction 4.15, *supra*.

