

**Doc5538**

**From:** tryingtosew@aol.com

**Posted At:** Thursday, February 01, 2007 12:08 PM

**Conversation:** URGENT To: Richard M. Berennan

**Posted To:** Comments

**Subject:** URGENT To: Richard M. Berennan

Dear Sir:

I have a senario pertaining to FMLA and it's application. We have an employee who was hit by a car on 10/8/06 and had not worked for us a full 12 months at the time of the accident. The employee did work more than 1250 hours in the time before the accident.

**We did not put him on FMLA since he did not work 12 months for us, should we have put him on FMLA?**

We called the employee and asked him to come in to our business and to bring with him any necessary medical documents showing work restrictions or a return to work date but the employee did not attend any of the meetings. He called before the first two meetings and left a message cancelling and then did not call or show for the last meeting.

We sent a registered letter to the employee on 1/29/07 asking him to produce a note from his physician showing work restrictions or a return to work date by 2/9/07 and he signed for the letter on 1/31/07 according to the return receipt I received back in the mail.

The employee is receiving 66 1/3% of his payroll from the short term disability carrier through 2/23/07.

If he does not produce a note from a physician by 2/9/07, can we legally terminate his employment and replace the worker?

Please advise at your earliest convenience.

Thanks.

{frustrated in HR}

Email Sent to:

Richard M. Berennan, Senior Regulatory Officer.

Wage and Hour Division, Employment Standards Administration

US Department of Labor, Room S-3502

200 Constitution Avenue NW

Washington, DC 20210

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