



## ASK Fisher Phillips: Dealership Update

Insights

5.01.13

### **(Dealership Update, No. 2, May 2013)**

*Our Dealership Practice Group represents thousands of dealerships all across the country, from large consolidators, to regional groups, to single dealerships. Because of working so closely with so many dealerships for so many years, we've acquired an in-depth understanding of dealership operations as well as a wealth of practical experience in dealing with dealers' unique labor and employment issues.*

*In "Ask Fisher Phillips," we will be taking some of the more common dealership questions and providing our response and advice. This section is based on our clients' real-life questions. But don't worry . . . all names have been removed to protect the innocent!*

#### **QUESTION:**

We have an employee who was off for five days taking care of his sick wife. He has been with the dealership for more than a year and worked more than 1,250 hours last year. I sent him the FMLA paperwork. He called me and said that he did not want to use his time off for FMLA, and instead was just going to use unpaid time off. What do I do now?

#### **ANSWER:**

An employee does not have a choice whether or not to take FMLA. If the employee and the reason for the absence satisfy the requirements of FMLA, then you are legally obligated to grant it and he or she is obligated to take it. Otherwise their absence is simply unexcused. So tell the employee that you are taking him at his word that he needed time off to care for his wife (a FMLA-qualifying event) and that based on that representation, you have granted him five days of FMLA.