

Quitting time? Performance improvement plan not enough to justify discrimination lawsuit

Performance improvement plans (PIPs) are great tools to help underperforming employees come up to standards. But some employees think they can file a lawsuit anytime they are placed on a PIP or are justified in quitting. As the following case shows, that's not necessarily true.

Recent case: Mary Swingle worked for Novo Nordisk as a project manager, making sure pharmaceutical clinical trials progressed smoothly. When she developed a kidney disorder that required surgery, she took FMLA leave.

When she returned, she got a performance appraisal that said she was meeting expectations. Swingle got a raise and an annual bonus, which the company didn't even prorate to account for the 20% of the work year Swingle had missed while out on leave.

At the same time, however, her supervisor pointed out some problems with the latest clinical trial Swingle had worked on. Shortly after, Swingle was placed on a PIP. She then found a better-paying job with a competitor and quit.

However, she still filed an FMLA discrimination lawsuit. She alleged that by being placed on the PIP, she was being punished for taking FMLA leave and had no choice but to quit.

The court disagreed and dismissed her lawsuit. First, it concluded that being placed on a PIP isn't an adverse employment action like being fired or demoted. Second, it said that there was nothing outrageous about being asked to improve that would compel a reasonable employee to quit. (*Swingle v. Novo Nordisk*, No. 08-1186, DC NJ, 2009)