

When tracking FMLA abuse, use surveillance cautiously

Before you decide to videotape someone whom you suspect may be abusing FMLA leave, make sure you have a good-faith reason to do so. And be prepared to show that surveillance is a common practice for similar suspicions.

Recent case: Paul Casseus has sickle cell anemia, which sometimes causes seeping sores on his legs that create a strong odor. He took FMLA leave to tend to the wounds twice. The two leaves occurred four years apart.

The second time, HR suspected he was abusing leave and ordered surveillance. He was fired when the video showed him walking for a few minutes while using a cane and driving his car.

He sued for FMLA interference. The court ordered a trial, saying it was not clear the employer acted in good faith when it ordered surveillance. (*Casseus v. Verizon*, No. 08-CV-4119, ED NY, 2010)