

# Beware discipline after return from FMLA leave

Employees are protected against retaliation for taking FMLA leave. Disciplining an employee who has just returned from such leave is risky, especially if you can't point to anything truly objective as the reason.

Attributing a "poor attitude" to returning employees is a bad idea unless you can provide specific examples of actual work deficiencies.

**Recent case:** Peggy Hornak, a lead accountant for EPCO, performed so well she received a bonus in July 2007. But by the end of the year, Hornak was beginning to feel the effects of job stress. Her doctor recommended that she take a four-week FMLA leave of absence for what he called disabling headaches and neck pain.

As soon as she began her FMLA leave, the company persuaded her to continue working at least a few hours while she was off, which she did. She then returned to work after the four-week absence.

Within a few weeks, EPCO told her she could resign or face termination. The reason? Her bosses believed she had returned from leave with a sullen and surly disposition and "she had become increasingly uncooperative and disengaged in the days and weeks following her leave."

Hornak sued for FMLA retaliation, arguing that the close timing of her return and dismissal made management's complaints suspect.

She noted that EPCO had never disciplined her before she asked for FMLA leave, but began a file marked "Peggy's documentation" as soon as she asked for leave. She pointed out that EPCO had urged her to work during her leave and had given her a bonus months earlier.

The court agreed that the timing—combined with suspicious behavior such as demanding she work during leave and subjective assessments of attitude—was enough to send the case to trial. (*Hornak v. EPCO*, No. 09-3902, SD TX, 2010)