

How not to handle FMLA leave: Do what Chicago did to a seriously ill employee

Here's a chance to learn from an employer's FMLA mistakes. Don't make the same ones yourself.

Recent case: Theresa Rodriguez worked for the city of Chicago as a deputy director, overseeing important and complicated modernization projects. Her prior experience included HR management.

Rodriguez, who has diabetes and high blood pressure, developed heart palpitations and was hospitalized. She called her boss and explained that the doctors were "running tests" and that her heart was beating erratically, leading to the "suspicion that I suffered a heart attack." Rodriguez also called several other employees to keep them informed.

She was diagnosed with a condition that causes an abnormally rapid heartbeat, palpitations, dizziness and angina. She was ordered to stay home for about a week.

The day she returned to work, she attended a late-afternoon meeting and then felt ill. An ambulance took her back to the hospital. After another discharge and readmission, she underwent a cardiac procedure designed to stop irregular heartbeats.

Over the next weeks, Rodriguez was in and out of the office and continued to undergo medical tests and procedures designed to figure out why she was still having heart symptoms. One of her doctors eventually concluded that she was essentially worried sick.

Rodriguez was terminated the day she returned from leave. She sued, alleging interference with her right to take FMLA leave. A court ruled that her case can continue. (*Rodriguez v. City of Chicago*, No. 08-CV-4710, ND IL, 2011)

4 mistakes could sink this case for Chicago

The city of Chicago's case in this lawsuit is greatly hampered by four critical mistakes it made:

Mistake 1: First, the city argued that Rodriguez wasn't on FMLA leave when she was terminated. It based that argument on allowable methods for calculating eligibility. Because she had missed so much work between her first hospitalization in January and her termination in September, the city reasoned that she couldn't show she had worked 1,250 hours in the preceding 12 months, and therefore wasn't eligible. But the court disagreed, reasoning that starting in January, she was already eligible for 12 weeks of leave that she could use in the calendar year. Since the city hadn't selected another method, it had to allow the method most generous to employees.

Mistake 2: The city argued that Rodriguez wasn't suffering from a serious health condition after the medical procedure that supposedly fixed her heart. The court nixed that idea, too, because accepting it would mean that no one would be eligible for FMLA leave until his or her condition was diagnosed.

Mistake 3: Chicago said it really fired Rodriguez for poor performance. But in court, it became clear that her “performance problems” were the result of her frequent absences because of cardiac illness. In other words, she was unreliable because she was taking [intermittent FMLA-protected leave](#).

Mistake 4: The city discovered Rodriguez had been overpaid by thousands of dollars because of an error. It said it would have fired her anyway. But other overpaid employees were not fired.