

Insubordination policy trumps progressive discipline

Many employers who have progressive discipline and no-fault attendance programs believe they must stick to progressive discipline for every attendance infraction. But that's not so.

Employers with a robust insubordination policy can jump over progressive discipline—moving right to termination—without fear of retaliation or interference-with-FMLA claims. Just make sure you're consistent in making such decisions.

Recent case: Debra Decato worked as a surgical assistant at the Northeast Medical Center Hospital in Houston. She took FMLA leave to have a benign tumor removed from her hand. While she was out, Decato's mother helped care for her.

Decato was scheduled for work on Jan. 4, but her mother missed her flight on Jan. 3. Decato then called her supervisor, requesting an extra day off. The hospital denied her request, but she called off the next morning anyway, using the standard procedure for absences. The hospital fired her for insubordination.

Decato sued, alleging retaliation for taking FMLA leave. She claimed the hospital should have followed its progressive discipline policy, not fired her. The district court disagreed.

Because the hospital listed "insubordination" in its policy as a reason for immediate discharge, it was free to define her refusal to show as insubordination rather than a call-off. (*Decato v. Northeast Medical Center Hospital*, No. H-05-0449, SD Texas, 2006)