

Can Employees Have Fun While on FMLA Leave?

Sure, a birthday party may lift your spirits. But Congress probably didn't have party attendance in mind as "covered treatment" when it gave employees the right to take FMLA medical leave. Still, should you instantly fire a worker for attending a party while on FMLA leave? As this ruling shows, you better think twice about blowing out those candles ...

Case in Point: Diandra Gurne, a phone-company call-center worker, was diagnosed with chronic migraines and anxiety. At her doctor's request, the company certified that she be given 36 hours a month of intermittent leave under the Family Medical Leave Act (FMLA).



One day the following month, Gurne had a reaction to a new depression medication. She called in sick before her 8:30 a.m. to 5:00 p.m. shift. She claimed the time off was part of her FMLA intermittent leave. She rested all day, then left her house to attend a co-worker's husband's birthday party.

Gurne claims she arrived at the party around 6:00 p.m. But one of the company's managers also attended the party and said Gurne actually arrived closer to 4:00 p.m. After an investigation, the phone company retroactively denied Gurne four hours of FMLA leave. Eventually, it fired her.

She sued, saying the firing was interference with her FMLA rights and retaliation. The phone company argued that Gurne violated the company's code of conduct that prohibits fraudulently using FMLA time by attending the party while supposedly on FMLA leave.

What happened next ... and what lessons can be learned?

The employer argued that it "honestly believed" Gurne asked for FMLA time off not for sick leave but to attend the party. Because of this honest belief, the employer said, it should be free of liability.

While the court debated about the "honest belief" defense—because it is not recognized in all jurisdictions—it ultimately decided in favor of the employee. The question of whether or not she was at the party during her shift was something the jury would get to decide after listening to all the evidence. ([*Gurne v. Mich. Bell Tel. Co.*](#), E.D. Mich., 11/15/11)

3 Lessons Learned...Without Going to Court

1. Look in the FMLA goody bag. Employees who are entitled to FMLA goodies can take the leave all at once, in weeks or in hours. There are different ramifications to each as this court noted. As in this case, the leave started and ended all in a day's shift.

2. Pass out party hats. The FMLA is complicated and intermittent leave makes it even more confusing. Know which other voices should evaluate the situation. Invite them to weigh in. Often times, attorneys, HR professionals, investigators and managers bring different but helpful opinions and perspectives to the party.

3. Don't go nuts over the guest list. As this case clearly noted, you can be at a party with someone who just finished using intermittent FMLA leave. If that's the case, then "leave" them alone.

Have questions about applying the FMLA in your workplace?

Listen to our special webinar, **[FMLA in the Trenches: Advanced Tips & Tactics to Protect Your Company.](#)** You'll learn how to master FMLA paperwork, confidently handle any FMLA question employees throw at you and thwart those employees who try to "game" the FMLA system.