

What Type of 'Care' Qualifies for FMLA Leave?



Do you get nervous and sweaty when an employee asks for leave under the Family and Medical Leave Act (FMLA) to help a sick family member? What kind of “needed care” is really needed to be eligible for FMLA leave? A court’s ruling last month helped further define the boundaries ...

Case in Point: David Miller, a 20-year Nebraska state employee, regularly drove his father to medical appointments after his father was diagnosed with terminal cancer. Eventually, the doctor estimated his father had about 90 days to live and suggested he move into hospice care. The father refused. This refusal caused Miller and his father to have a falling out.

Subsequently, Miller missed 23 days of work and was eventually fired for unexcused absences. Miller argued he was improperly terminated because he was needed to care for his father. Also, during that time, Miller suffered a “complete physical and mental breakdown” because of his father’s illness and, he said, this breakdown compelled him to miss work.

In contrast, the father’s caretaker testified that his father was able to eat, shower and dress independently and even drove himself to a party.

Miller sued his employer, saying it interfered with his FMLA rights. The employer defended the claim by asserting that Miller was not “needed to care for” his father under the standards of law and, therefore, his absences were unapproved and termination was proper.

What happened next? The court sided with the employer and dismissed the case. It noted that the U.S. Department of Labor’s **FMLA regulations** say “needed care” includes “making arrangements for changes in care, such as transfer to a nursing home.”

Miller also argued he was providing his dad with “psychological care.” However, the court found that psychological assistance may only be necessary for a family member who is “receiving inpatient or home care.” Miller failed to raise a jury question as to whether psychological care was necessary to treat his father’s illness. (***Miller v. Nebraska Dept. of Econ. Dev.***, 8th Cir., 4/16/12)

3 Lessons Learned ... Without Going to Court

1. Know the FMLA requirements. In this case, the court clearly defined what an employee must show to properly be granted FMLA leave for “needing to take care” of covered relatives.

2. Be consistent. Once you start granting non-qualifying leaves under the FMLA, you open the door for screams of discrimination. “You gave FMLA leave to Miller, I want it, too!”

3. Listen carefully, fire wisely. The employer heard conflicting facts. On the one hand, Miller asked for leave to care for his father but his father denied the care. On the other hand, Miller claimed he could not care for his father because his father caused him emotional issues. The latter was not a covered reason for leave under the FMLA's "needed to care for" clause.