

Must you give FMLA time off to refill a prescription?

You must allow employees to take job-protected FMLA leave for certain medical treatments. But what counts as “treatment”? Do you have to grant time off for workers to refill their prescriptions? While the employees are doing so, maybe they can pick up a donut, cup of coffee and a magazine. Is that all covered, too? Here's what the court said in an important ruling last week ...



Case in Point: Robert Jones, a machine operator in Indiana, suffered from back pain and anxiety. He saw his doctor every couple months, had medical tests a few times each year and regularly took prescription drugs.

Jones's employer used an attendance point system for absences: More than three points in a four-month period and the employee was fired. Jones had accumulated 2.5 points. One day, he requested and was granted FMLA leave to attend a medical appointment. In actuality, his appointment simply consisted of stopping at his doctor's office to get a prescription refill and do some paper work.

The employer believed this absence didn't count as “treatment” and wasn't covered under the FMLA because Jones never saw a doctor. The company said his absence was unapproved. Because that unapproved absence pushed Jones over the three-point mark, he was terminated.

Jones sued, saying the company interfered with his FMLA rights.

The employer agreed that Jones had a “serious health condition” as required under the first prong of the FMLA. But, it questioned the second prong, that Jones was unable to perform his duties as a machine operator in order to receive medical treatment. The employer argued that Jones never received medical treatment that day because all he did was get a prescription refilled. (*Jones v. C&D Techs. Inc.*, 7th Cir., 6/28/12).

What happened next? The court sided with the employer. It ruled that the term “treatment” is not explicitly defined under the statute. However, it does exclude routine physical checkups. Further, while taking prescription medications may constitute a chronic condition requiring continued treatment, it does not mean Jones was unable to work because he was receiving medical treatment for that condition.

The court noted, “Taking prescription medicine is not indicative of whether an employee receives treatment that prevents her from performing her job. A course of prescription medication and an inability to perform a job are not mutually exclusive.”

3 Lessons Learned ... Without Having to Go to Court

1. Don't try this alone. Whenever you use the word “termination” in the same sentence as “FMLA,” make sure you reach out to legal counsel for a second opinion. It's cheaper than a full-blown lawsuit.

2. Have an attendance policy. The court noted the company was just following its own policy. This is key in avoiding random terminations that employees can call discrimination.

3. Create a clear paper trail. In this case, there was a dispute as to whether Jones had requested the whole day off or just leave for the time of the “medical treatment.” Either way, the court ruled in favor of the employer. But it never sits well with a judge or jury to have fuzzy records.