

# Criticism after FMLA? Beware retaliation

When a good employee with no disciplinary record suddenly turns into a bad employee following FMLA leave, watch out. You may have on your hands a bitter supervisor who wants to punish the employee for disrupting workflow, creating scheduling hassles and otherwise making life more difficult.

Before approving discipline or a poor evaluation, look deeper. Check to make sure others with similar performance problems who didn't take leave weren't treated more favorably.

**Recent case:** Marie worked in a retirement community as a certified nursing assistant and got good reviews. She had never been written up for any disciplinary problems or received a poor evaluation.

Then Marie hurt her shoulder while lifting a resident. She filed a workers' compensation claim and was temporarily placed on light duty, since she could not lift more than 10 pounds until fully healed. She took intermittent FMLA leave from that light-duty position to attend physical therapy and other medical appointments.

After getting the all-clear to return to work, Marie soon found herself under investigation for allegedly treating a resident poorly. That resident apparently got angry when Marie allegedly told her not to "get smart with me." The retirement home then fired Marie.

She sued, alleging that she had been terminated in retaliation for taking FMLA leave and filing a workers' compensation claim.

She noted her spotless pre-injury employment record, that another employee caught yelling and using "disrespectful language" with residents wasn't punished and that the employer had a progressive discipline program but didn't use it in Marie's case.

That was enough for the judge to order a trial. (*Villard v. Whitemarsh Continuing Care Retirement Community*, No. 10-7230, ED PA, 2012)