

Note condition when employee first invokes FMLA

Generally, simply calling in sick doesn't trigger an employer's obligations to offer FMLA leave. But what if the employee was very specific about his medical condition when he first called in and clearly was eligible for FMLA leave for that first absence?

Does he have to be equally specific later? That's up in the air, according to a recent case.

Recent case: Michael was an ambulance driver. He first suffered a transient ischemic attack (TIA), commonly called a "mini-stroke." Most people recover quickly, but may be susceptible to major strokes later. Michael called in after the first incident and then requested FMLA leave to recover for a few days. His supervisor suggested he take paid leave instead.

Later, Michael called in several more times, but didn't specify whether he suffered another TIA. He was terminated for excessive absences and then sued, alleging that the absences were covered by the FMLA and should not have been used against him.

The employer argued that it never knew why Michael had called in sick and therefore wasn't obligated to consider possible FMLA leave.

The court refused to dismiss the case, reasoning it would need more evidence on exactly what Michael said during the calls and whether the supervisor should have suspected another TIA was involved. (*Bowman v. St. Luke's Quakertown Hospital*, No. 12-797, ED PA, 2012)

Final note: A case like this puts employers in an awkward position. If you ask an employee whether his latest absence is related to an earlier illness, you may be setting yourself up for a "regarded as disabled" ADA lawsuit. Your question may indicate you think the employee is disabled and unable to work. But if you don't ask and count the time against him, you may be denying appropriate FMLA leave.

The best approach: Educate employees about the FMLA, including that they must let HR know that they have a serious health condition when calling in.