

Reinstate employee to equivalent job after FMLA leave

When an employee finishes FMLA leave, she is entitled to return to the same or an equivalent job. The reinstatement provision gives employees some flexibility. However, it's a mistake to think it's OK to return the employee to any old job.

Recent case: Henrietta, who is black, had conflicts with her white supervisor. The two frequently were at odds, particularly over the treatment of other minority employees. Henrietta's boss also frequently got in her face and yelled.

Finally, Henrietta couldn't take it anymore and got her doctor to certify that she needed FMLA leave.

Even then, her boss didn't make it easy. First, he made her put off FMLA leave until she finished a project. Then, he tried to delay her return by refusing to accept her return-to-work certificate unless it was signed by the same doctor who had prepared the original FMLA certification.

When Henrietta finally did come back, she was transferred to a different job, moved from an office to a cubicle, had her pay cut and had to travel more than before.

She sued, alleging failure to reinstate following FMLA leave (along with a slew of other claims). The employer tried to argue she received everything she was entitled to when she took 12 weeks off and still had a job to come back to.

The court disagreed, noting that the old and new jobs were clearly not equivalent on several levels. (*Mercer v. Rescare Workforce Services, et al.*, No. 11-CV-3600, SD TX, 2013)