

# FMLA leave inconvenient? Too bad! That's no excuse for termination

It can be frustrating to deal with an employee who has constant attendance problems. But if that employee has a serious health condition entitling him to FMLA leave, there's really nothing you can do, no matter how inconvenient and disruptive his absences are.

Warn supervisors and managers that they can't consider any FMLA time off when deciding to terminate a worker.

**Recent case:** Dale took FMLA leave when he had a heart attack. Soon, he was back at work.

But slowly, his attendance became a problem. He would call in because of car trouble or to attend a wedding. Other times, he didn't come to work because he was feeling ill. His supervisors were getting irritated at having to make last-minute schedule changes.

Then Dale twice took off several days in a row when his heart symptoms returned. First he was hospitalized for dehydration and then later for more heart treatment.

Then he was fired. One supervisor admitted that Dale's last two absences were what made his attendance problems intolerable.

Dale sued, alleging interference with his right to FMLA leave.

The court said his case could go forward. It was clear, the court noted, that some of the absences that played a role in the company's termination decision involved FMLA leave. The supervisor had admitted as much. (*Covert v. The Lane Construction Co.*, No. 1:11-CV-1156, MD NC, 2013)

**Final note:** The FMLA is an entitlement. Employer inconvenience is irrelevant.