

FMLA: What if worker won't return to old job?

Employees who take protected FMLA leave are supposed to return to the same or an equivalent position in terms of pay, duties and benefits. But what if the employee doesn't want the same job for some reason? Must you create a new job for her? No.

Recent case: Barbara worked as a patient advocate for a HealthEast medical facility. Over the years, she had several conflicts with her supervisor about what information should be retained in patient files. The conflicts escalated and after the supervisor told her she would receive a negative performance appraisal, Barbara became depressed and suicidal. She took FMLA leave for treatment.

During her leave, she kept in touch with HR. Before her leave expired, she was asked to provide a fitness-to-return-to-work certificate. Barbara responded that her doctor didn't want to clear her for work if she had to work under the same supervisor.

She then suggested that the hospital create a new job for her in the emergency department on the evening shift. Her request was rejected and she was terminated for job abandonment after her leave expired and she didn't return.

Barbara sued, alleging she should have been reinstated to an equivalent job.

The court tossed out her case. The hospital met its obligation by holding open her old job and didn't have to create a new, equivalent one. (*Peterson v. HealthEast Woodwinds Hospital*, No. 12-327, DC MN, 2013)

Final note: The right to reinstatement is limited. In this case, if the employee couldn't get past a fitness-to-return-to-work certification, she lost her right to get her old job back. She had no right to demand an equivalent job.