

Is 'We're Short-Staffed' a Legal Reason to Deny Medical Leave?



Employers have to run their businesses. This means they must be fully staffed to function efficiently. But, what's an employer to do if it is already short staffed and an employee requests leave for a last-minute medical appointment? Just how much scheduling chaos must an employer tolerate before saying "no"?

As this new court ruling shows, employers will be rolling the liability dice if they try to use staffing problems as a reason to deny leave ...

Case in Point: Karen, a part-time register an Illinois medical center, had surgery for Stage 2 breast cancer. The medical center granted her various leaves under the Family and Medical Leave Act (FMLA), including follow-up testing when she discovered lumps in her breasts.

Eventually, Karen requested a reduced schedule for one month so she could make last-minute appointments with her difficult-to-book doctor. But her department was already short staffed, so the medical center denied her request.

Karen, however, believed her request was granted. When she did not show up for work, she was terminated.

Karen sued citing the Americans with Disabilities Act (ADA), saying the firing was discriminatory and in retaliation for requesting job-protected leave.

Result: The medical center defended the lawsuit, arguing the accommodation request was unreasonable because the hospital was short staffed. Too bad, the court said, in denying the employer's request for summary judgment. As the court made clear, "Staff constraints don't drive the denial of requests." ([*Schwab v. N. Ill. Med. Ctr.*](#), N.D. Ill., 5/20/14)

3 Lessons Learned ... Without Going to Court

1. **Look backwards.** The court noted the medical center granted all kinds of leaves for Karen in the past. So a jury could conclude that denying one now looks like pretext for discrimination.
2. **Look at today.** Being short staffed is not an employee's concern, especially when that employee has medical problems. Consider short-term solutions, like contract workers or giving more hours to current workers. Karen was only requesting a one-month leave and not indefinite leave.
3. **Look forward.** Do you think a jury is really going to be sympathetic to a short-staffed hospital or an employee with breast cancer that was fired? Plus, this hospital just got terrible press nationwide. Was it all

worth just saying “no” when “yes” was the right thing to do?