

Your Days Are Numbered: Beware Disciplining Employees So Soon After FMLA Requests

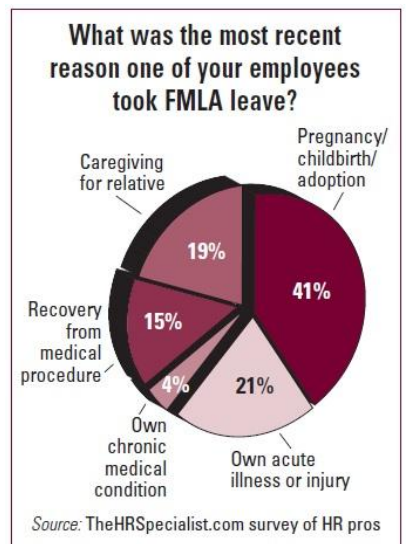


When it comes to the Family and Medical Leave Act (FMLA), courts always pull out their stopwatches and calendars to see how closely the employee's protected activity (requesting or taking FMLA leave) coincides with the adverse action (discipline or firing). As this new court ruling shows, the smaller the time, the bigger your risk of liability ...

Case in Point: Lori worked as a pediatric pharmacist at the University of Maryland. During one of her shifts, she experienced increased back pain related to her degenerative disk disease. She tried to contact her supervisor by phone, texts and pager but to no avail. Eventually, she asked another pharmacist to monitor her station while she ran home to get her medication. (Leaving her station without approval was a violation of the employer's policy.)

When Lori returned to work, her supervisor noted she had slurred speech and seemed confused. The supervisor sent her home on administrative leave pending a fitness for duty exam.

About seven weeks after that, Lori requested FMLA leave. Just two days later, she was fired. The stated reason: She had left her post that day—a policy violation.



Lori sued, claiming the firing was actually retaliation for submitting a request for FMLA leave. Her employer asserted that Lori was a pill and leaving her post is a fire-able offense.

Result? While the employer tried to get the cases dismissed on summary judgment, the court said “not so fast” and sent it to trial. If Lori's firing was truly because she had put patient care at risk, the court asked, why wasn't

she fired right away?

“Given the seven-week gap between the violation and her termination (and) the temporal proximity between establishing her eligibility for FMLA protected leave and her termination,” the court said, “the court concludes there is sufficient evidence for a jury to find pretext.” (*Flood v. Univ. of Md. Med. Sys. Corp.*, D. Md., 12-02100, 12/23/14)

3 Lessons Learned ... Without Going to Court

1. **Enforce policies promptly.** The longer an employer waits to enforce a policy, the greater the chance the employee will develop legal rights that will compromise the employment action.
2. **Read documents carefully.** The employer claimed Lori’s fitness for duty report showed she was fit for duty. However, the court noted the report, which was filed two days before her termination, said she was not fit for duty and should be reevaluated in a month. Clarify any questions before taking action on such reports.
3. **Take a chill pill.** Once an employee requests FMLA leave, stop all pending employment actions. Courts and juries are extra sensitive to discipline that happens so quickly after employees exercise their FMLA rights.