

Think twice before changing employee's job duties or hours during FMLA leave

Employees who take FMLA leave are generally entitled to come back to their old jobs when they return. If you make any changes to their jobs, be sure you can document solid business reasons that are unrelated to FMLA leave.

Recent case: La Nae worked as a scheduler for a home health service and also filed medical reports. After she announced she was taking FMLA leave, her supervisor informed her that her position would soon change, with her hours reduced to 25 per week. The supervisor suggested that she might want to use her time off to look for another job.

While La Nae was off, an inspection revealed problems with the reports she was supposed to file. The service decided to fire La Nae, and to bypass the progressive discipline program it usually used with underperforming employees.

La Nae sued, alleging several FMLA-related claims, including retaliation and interference with the right to take leave.

The court said her case could proceed, since the rush to terminate seemed suspicious. La Nae hadn't benefited from the usual progressive discipline system. Her job changed during her time off. Plus, her manager had suggested she use her time off to look for a job.

Now a jury will decide whether the service had legitimate reasons for the discharge or had come up with excuses to get rid of someone who took FMLA leave. (*Johnson v. Bethesda, et al.*, No. 13-2575, DC MN, 2014)