

Tell bosses: Don't query medical appointments

Warn supervisors that they shouldn't comment on the time that employees take off for medical treatments. If the underlying medical condition is a disability under the ADA, such comments may come back later to haunt the employer.

Consider, for example, the decision to lay off poor performers. If a supervisor who recommends employees for termination made earlier comments about time off, those comments can be used to prove that the employee was picked because of her disability.

Recent case: Tanya worked at a charity's retail store. After she was involved in an accident that injured her hand and arm, she began taking time off for medical appointments and physical therapy. Her boss told her that she was "jeopardizing her job by taking off." He frequently asked whether an appointment was "really" necessary.

Six months later, when the physical therapy failed to improve her condition, Tanya took FMLA leave for carpal tunnel surgery.

During the leave, she was then called in and told she had been terminated. The same supervisor who had warned her about missing work six months earlier decided which employees would lose their jobs.

Tanya sued, alleging disability discrimination. She argued that her arm caused pain and limited her ability to care for herself, making her disabled under the ADA.

The court agreed and ordered a trial. She can use her supervisor's comments as evidence of discrimination. (*Jacobs v. York Union Rescue Mission, et al.*, No. 1-12-CV-0288, MD PA, 2014)

Final note: Don't criticize employees for taking time off for medical treatment if the underlying condition either qualifies as a disability or is a serious health condition under the FMLA. Remember, FMLA leave is an entitlement for eligible employees, and medical treatment time off is a reasonable accommodation under the ADA.