

Prepare for legal trouble when bosses play detective with employees on FMLA leave

Bosses sometimes find it inconvenient when employees are out on FMLA leave. After all, every time an employee is absent, someone has to pick up the slack. So it shouldn't come as a surprise that some front-line managers get frustrated and angry at employees who don't come to work as scheduled. Don't let those frustrations cause a legal nightmare.

Train all supervisors about the FMLA. Instruct them to refer any perceived problems to HR. Direct supervisors should not, for example, conduct their own "investigations" into whether an employee is abusing intermittent FMLA leave by conducting surveillance or taking other intrusive steps. Doing so may net a lawsuit alleging interference with FMLA rights.

Recent case: John worked for many years as a sewer plant operator. He then developed some medical problems, including a condition known as trigeminal neuralgia. The condition, which is painful, is generally considered a serious health condition under the FMLA. John had surgery but continued to suffer from frequent, severe and debilitating flare-ups that required time off from work.

John applied for intermittent FMLA leave so he could take time off when the pain flared up. He also missed work for several emergency room visits related to the condition and for an episode of blood clots that landed him in the intensive care unit for a few days.

Several times, John's supervisors told him he had to get second medical certifications. On one occasion, a supervisor told John that he did not believe that trigeminal neuralgia was a serious medical condition.

Then John called in sick to work due to a flare-up. At some point that day, he left his house to pick up medicine at a local drug store. While there, John got a call from his Veterans of Foreign Wars chapter asking for his help with some paperwork at the VFW lodge. John agreed to stop by the VFW on his way home from the pharmacy. He parked his truck in the VFW parking lot and spent between 30 minutes and an hour assisting the VFW president with paperwork.

John's supervisor saw John's truck in the lot and bluffed his way past security into the club. The boss apparently believed John was drinking at the VFW when he was off work on FMLA leave. But John was in the VFW office, not the bar, and his supervisor never saw him. Even so, the next day, John was ordered to submit to a drug and alcohol screening, which came back negative.

John then took vacation after the "stress" of the earlier events and asked for more FMLA leave. He eventually quit after being informed that his application wasn't complete and that he had to return to work or face discharge.

John sued, alleging interference with his right to FMLA leave.

The court said his case could go forward, based on his supervisor's actions, including following him, entering the VFW to look for him and subjecting him to the drug and alcohol screening. (*Cichonke v. Bristol Township*, No.

