

OK to discipline for intermittent leave abuse

Intermittent FMLA leave can be useful for employees who need to manage chronic health conditions that periodically flare up and require taking time off. Once the need for intermittent leave has been certified, the worker is able to call off as needed.

Of course, unexpected absences can cause scheduling headaches. However, since FMLA leave is an entitlement, there isn't much employers can do—at least when the call-offs are legitimate.

But not every absence is legit. Some employees use intermittent FMLA leave as a “get out of jail free card” when they feel like they need a day or two off for reasons entirely unrelated to a serious health condition.

The good news: If you suspect that an employee is abusing her intermittent FMLA leave rights, you can and should investigate. If you discover that the employee has been lying, you are within your rights as an employer to discipline her.

Recent case: As a flight attendant for United Airlines, Mingyi was allowed to fly free when space was available. Though based in the United States, she had family in Taiwan.

She had a chronic health condition for which she had been approved to take intermittent FMLA leave.

Mingyi and her husband flew on a free crew flight to Taiwan. Mingyi was scheduled to work a shift flying out of Colorado approximately 11 hours after she arrived in Taiwan. Instead, she called in sick with a migraine, a condition covered by her intermittent FMLA leave certification.

The airline suspected Mingyi had planned the absence and discovered that while she had researched flights from Colorado to Taiwan, she hadn't researched any return flights. It then fired her for dishonesty.

She sued, alleging interference with her intermittent leave rights.

The court tossed out her case. It said United was within its rights to question Mingyi's use of FMLA leave and that its conclusion that she had been dishonest was reason enough to fire her. (*Rowe v. United Airlines*, No. 14-1317, 10th Cir., 2015)