

Use it or lose it! You must enforce your call-off policy

Employers have the right to set reasonable call-off requirements for when an employee will miss a shift or arrive late. Employees can be required to follow those rules. If someone doesn't, you can discipline him—even if you approved FMLA leave for the absence.

But beware: If you don't consistently enforce the call-off rule, you may be on the losing end of an FMLA lawsuit.

Bottom line: If you are going to have a strict call-off rule, enforce it each and every time. Don't let some employees text their notification, for example, while others have to make a phone call.

Recent case: Delbert worked for Tyson Fresh Meats as a supervisor. He did not come to work on Dec. 28 because he was sick. Instead of calling in, he had his girlfriend (also a Tyson employee) tell his boss that he was ill and would be out for a few days. However, Delbert had his supervisor's cellphone number and sent her a text before the start of his shift notifying her he was ill.

Tyson's policy required a personal phone call to a supervisor to report a call-off.

Delbert got a doctor's excuse for his absence and for additional time off. He filled out a leave form. The company approved FMLA leave for the absence.

But when Delbert showed up for work, he was instructed to not go to the floor and start work. Instead, he was terminated for failing to phone his boss according to the policy.

He sued, alleging interference with his FMLA rights.

Tyson alleged it was legitimate to fire him for not following its call-off rule. But Delbert pointed out that the rule wasn't consistently enforced. In fact, before Dec. 28, he had on several occasions sent texts regarding other absences and had not been disciplined.

The court said Delbert's case would proceed because inconsistent enforcement of the call-off policy could mean that, in this case, Tyson had used the rule as an excuse to terminate someone returning from FMLA leave. (*Hudson v. Tyson Fresh Meats*, No. 14-1852, 8th Cir., 2015)

Don't let bosses undercut your call-off policy

Here are some steps you can take to assure your supervisors aren't unintentionally sabotaging your call-off policy:

- **Require supervisors to report all absences** to HR.
- **Give supervisors a call-off reporting form.** Make sure the form has check boxes for reporting how the call-off was made. For example, if you only allow telephone call-offs, say so on the form and have the supervisor note that the call took place and the time it was received.

- **Train supervisors in the call-off process.** Explain that they may not deviate from the call-off rule for one employee or allow alternative notification.
- **Allow for true emergencies.** The FMLA regulations excuse an employee from following call-off rules if he or she is incapacitated and no one could make the call on his or her behalf. That could be the case with an auto accident, heart attack or other true medical emergency. Allowing late call-off notification under such circumstances won't affect your call-off rule's viability in other nonemergency situations.