

Negative comments about FMLA use? Call your lawyer because you will be sued

Now is a good time to remind supervisors that making negative comments about FMLA usage can end in litigation. That's because telling employees that taking time off makes it hard for co-workers who have to pick up the slack can chill further use of FMLA leave, discouraging employees from using time off they are legally entitled to.

Recent case: Lisa worked as a public safety officer for the University of Scranton. Her son has diabetes and she was approved to take intermittent FMLA leave to care for him when his condition caused complications.

Then Lisa called off one morning to care for her son's complications. Her supervisor found a Facebook photo in which Lisa had been "tagged" by another user at a bar in the early morning hours before the call.

Suspicious, he called Lisa into a meeting to discuss her FMLA leave use. He told her that because the department was short-staffed, her request had been "inconsiderate." She complained to another supervisor in the chain-of-command, who reiterated that her request had indeed been "inconsiderate."

Lisa was eventually discharged for reasons unrelated to the FMLA. She sued and added a claim of interference with her right to take FMLA leave. She claimed the comments that she had been inconsiderate chilled her desire to take leave even when she was clearly entitled and needed the time off.

The court agreed. If an employee is discouraged from taking leave, that amounts to interference. (*Kimes v. University of Scranton*, No. 3-14-CV-00091, MD PA, 2015)