

Don't let FMLA stop planned staffing changes

Some employees, knowing that the company is in the midst of making personnel changes, react poorly to the stress. They may even become so anxious that they need to take FMLA leave.

Normally, it's risky to fire someone who has just taken FMLA leave. However, you can terminate such an employee—if you can show that changes were underway before FMLA leave began.

Recent case: Lance worked as a trainer for the Soo Line railroad. He typically traveled for work for seven days, followed by a week off.

Early on, Lance's supervisors criticized the way he handled the last day of his travel, pointing out that trainers were supposed to report to a rail yard and work for a few hours before heading for home.

Lance learned that the railroad was planning to focus on classroom learning rather than the hands-on instruction he was used to delivering. He voiced concerns to co-workers and supervisors that classroom delivery wasn't his forte.

Then he took FMLA leave for anxiety and stress.

Three days after returning from leave, he was terminated after being informed the classroom training program was going forward.

He sued, alleging he was really terminated because he took FMLA leave.

But the court said the railroad had evidence that its decision to change the training program and its criticism of Lance's performance predated his FMLA leave. The case was dismissed. (*Schultz v. Soo Line*, No. 14-1096, DC MN, 2015)

Find more FMLA compliance advice at www.dol.gov/whd/fmla.