

Vindictive managers can spark FMLA liability

While it isn't convenient for managers when an employee takes FMLA leave, that leave is an entitlement. Punishing the employee—in small or big ways—when she returns can backfire big time.

Don't let it happen. Instruct managers that they must reinstate the employee with a smile and a minimum of fuss.

Recent case: Linda worked as an English teacher and developed a long list of ailments, including irritable bowel syndrome, Barrett's Esophagus, heart palpitations, depression, incontinence and post-traumatic stress disorder. She took a lengthy FMLA leave over the end of one school year and into the beginning of the next. Her principal arranged for a substitute teacher during the absence.

When Linda returned, she was initially assigned to another classroom. She requested her old class. Her supervisor then took a "poll" of the students, who supposedly requested that the substitute teacher stay on. Linda again asserted her right to reinstatement and was finally allowed back in the classroom. Then several students brought her what appeared to be copies of her medical records, which they claimed had been left in a common area of the school.

Linda sued, alleging her employer's actions would have dissuaded a reasonable employee from taking FMLA leave and, therefore, amounted to retaliation. The court said her claim can go to trial. A jury will decide whether leaving sensitive medical information in the open and the other incidents amounted to discouraging FMLA leave. (*Powell v. Department of Education*, No. 14-CV-2363, ED NY 2015)

Final note: Check back with returning employees to make sure their return was smooth. And remind supervisors before the employee comes back that retaliation won't be tolerated. And, of course, remember that medical records really should be under lock and key.