

No harm in being more generous than FMLA

Employers are supposed to let employees who need FMLA leave know about their eligibility and what's involved in taking leave. But what if you offer a leave plan that goes above and beyond what the FMLA requires? Courts won't hold that against you—even if you flub the FMLA's notice requirements.

Recent case: Heather, a teacher, asked about delaying the start of her school year so she could be treated for anorexia. Her school had a generous program that allowed up to three full months off. The first month was fully paid, the second paid at half-time and the third at one-third regular salary.

Heather took the paid time off and returned to work when it expired. No one had told her about FMLA leave, nor did the employee handbook mention it.

After her return, Heather was required to show she was recovering and following her medical team's treatment advice. It soon became apparent that she wasn't. She began to lose weight again, couldn't remember her students' names or follow lesson plans. Then Heather stopped treatment altogether and started missing work without calling in. She was terminated for poor performance.

Heather sued, alleging that no one ever told her about FMLA leave. She said if she had known about it, she would have taken FMLA leave.

But the court said that even though Heather hadn't received the required FMLA eligibility notice, she suffered no harm. She had already taken a more generous paid leave, which would have run concurrently with FMLA leave anyway. Her case was dismissed. (*Bernard v. Bishop Noland Episcopal Day School*, No. 15-30053, 5th Cir., 2015)