

DOL initiating more FMLA enforcement

You don't have to be sued to lose an FMLA case.

Recently the Department of Labor has stepped up efforts to help employees who haven't initiated a lawsuit. Even more ominously, the DOL is increasing the number of cases it undertakes on its own, before an employee has even filed a complaint.

In 2015, for example, the EEOC initiated over 42% of the wage-and-hour investigations it conducted—a record high. And in 79% of the investigations it initiated, it found a violation and recovered an average of \$8,900 in back wages to workers who never filed a complaint.

The DOL also has jurisdiction over FMLA enforcement, and can investigate employee FMLA complaints.

It has the authority to order the reinstatement of employees who have been terminated after taking FMLA leave and can tell the employer to pay back wages that may be due, plus other damages.

A recent case shows how that process works.

A banquet server who had worked for The Mirage Hotel and Casino in Las Vegas complained to the DOL that he had been fired for taking protected FMLA leave. A year later, the resort reinstated him while the investigation was still pending, apparently concluding that it should not have terminated him.

The man was glad just to have his job back.

But that wasn't good enough for the DOL. As investigators reviewed the server's reinstatement, they concluded that the resort owed him more, including full back pay for all the hours he would have worked had he not been terminated, plus credit for those hours towards his pension and for his health care coverage that he would also have had.

The DOL said all that was worth \$74,000 for the year the man spent idle, and ordered The Mirage to pay him.

Practical impact

What does this mean for employers and HR? It considerably ups the prevention ante.

Make sure all your managers and supervisors understand the FMLA and don't punish employees who ask for or take FMLA leave. Assume the DOL will discover the violation, either by following up on an employee complaint—or more frequently these days, on its own.