

Excessive absences justify firing—And bar unemployment compensation

Employees are expected to abide by reasonable attendance standards, and employers can—and should—enforce those rules. Fortunately, Ohio employers can fire chronically absent or tardy employees without worrying that unemployment compensation will be the reward for missing work. That's true as long as the absences weren't covered by the FMLA or other leave laws.

Recent case: Frank Bemak was fired from his hospital job for excessive absences. He had worked as a phlebotomist, a position requiring regular attendance. Bemak was absent 20 days for what he alleged were either migraine headaches or to go to court to help his daughter deal with a legal problem.

The hospital applied progressive discipline to Bemak before his discharge, and gave him every chance to explain the absences. But Bemak never turned in FMLA paperwork, nor did he show proof he had been in court.

When the state denied Bemak unemployment compensation benefits, he appealed. He argued that under Ohio law, it is illegal to punish an employee because of lost time as a result of the employee's court attendance. But since he never showed his employer a subpoena, he wasn't protected. Nor was it against public policy to deny him unemployment compensation when he couldn't prove he was required to be in court. (*Bemak v. Ohio Job and Family Services*, No. 89616, Court of Appeals of Ohio, 2008)