

Eliminating job ends employee's FMLA rights

Employees who are FMLA-eligible are entitled to reinstatement when they are ready to return to work. But the FMLA doesn't give those employees greater rights than other employees when it comes to termination.

What that means: Ordinarily employers must reinstate employees who take FMLA leave, but that only applies if the job still exists. If the position was eliminated for legitimate reasons, reinstatement rights no longer exist.

Example: If during FMLA leave, an employer reorganizes a department and eliminates the employee's job, then she is not entitled to reinstatement.

The key is being able to show that you eliminated the job for a valid reason unrelated to the employee's FMLA leave.

Recent case: Radmilla, who worked in special education, took FMLA leave when pregnant with her first child. She returned to work without incident. Several years later, she became pregnant again. Around the same time, her employer began a reorganization and eliminated several positions, including Radmilla's. However, she was allowed to stay on to ease the transition.

Throughout her pregnancy, Radmilla was told she should apply for the open positions that would survive the reorganization. However, she considered them all demotions and didn't apply.

When she was close to giving birth, she told her supervisor she was starting her FMLA leave. The employer then notified her she had been terminated the same day.

Radmilla sued, alleging interference with her right to FMLA leave.

But the court dismissed her case. It reasoned that Radmilla wasn't eligible because her job had been eliminated and she had not taken another position despite being urged to apply. It didn't matter that she had been allowed to continue performing what amounted to transitional work up until requesting leave. (*Shimanova v. Theracare*, SD NY, 2017)