

Teach managers: No complaining about FMLA

Make sure all supervisors understand that they must never criticize employees for taking FMLA leave.

For employees who need to care for their own serious health condition or that of a close relative, FMLA leave is a right, not a privilege.

Grousing about the inconvenience it can cause, holding leave against the worker at review time or otherwise making it known that it would be better if employees didn't exercise their FMLA rights can backfire badly.

A supervisor's negative comments alone may be enough to support an employee's FMLA retaliation claim.

And if an employee finds the criticism so overbearing that he feels he must quit—known as constructive discharge—it's quite possible for him to win a subsequent lawsuit.

Recent case: Daniel worked for Allegheny County and took FMLA leave with some frequency, including in 2012, 2013 and 2014.

Shortly after returning to work in 2014, his supervisor began chastising his staff, including Daniel, for "taking too many days off." In addition, the supervisor singled out Daniel on several occasions about the time he had missed.

Daniel quit and sued, alleging constructive discharge. He essentially claimed that the supervisor had made working for the county so intolerable, he had no choice but to quit. He claimed he had been retaliated against for taking leave by being singled out about missed work and that his "discharge" was part of the retaliation.

The county argued that because Daniel had received all the leave he was entitled to take, he had no case.

But the court said that while there had been no interference with his right to take leave, Daniel had enough evidence to go forward with his claim that he was punished for taking the leave to which he was entitled. The court ordered a trial. (*Troiano v. County of Allegheny*, WD PA, 2017)