

Tell managers: Never comment on FMLA leave

Employees who qualify for FMLA leave can't be punished for taking it. Any action that could be seen as dissuading workers from exercising their right to take FMLA leave amounts to interfering with a federal right.

That's why you must train managers and supervisors to avoid using any negative language when discussing employee use of FMLA leave.

Remember, FMLA leave is an entitlement no matter how inconvenient it may be for the employer.

Recent case: Justin developed digestive problems after a co-worker struck him twice while yelling slurs about Justin's sexual orientation. The co-worker was fired.

However, Justin ended up having to take FMLA leave to deal with his digestive issues. Then he took time off to help his mother, who suffered from lupus, a serious health condition under the FMLA.

Around the same time, Justin was rejected for two promotions. He then requested an earlier shift or the opportunity to work from home. Rejecting both requests, his supervisor made negative comments about Justin's personal problems. Finally, after Justin took a half day of FMLA leave, his boss noted aloud that he had missed a lot of work.

Within two days, the company terminated Justin, supposedly because of problems with his performance.

Justin sued, alleging interference with his FMLA rights. The court said that, taken together, the supervisor's comments, the rejected request for a schedule change and the timing of the discharge, there was enough evidence to take Justin's case to trial. (*Coleman v. Amerihealth*, ED PA, 2017)

Final note: The court also considered Justin's sexual orientation discrimination claims, but declined to expand Title VII to include them. Given that other federal courts in Pennsylvania have recently done so, that may be grounds for an appeal.