

Beware firing as employee nears eligibility to take FMLA leave

If an employee says she is going to need FMLA leave as soon as she becomes eligible, terminating her may amount to interference with the right to take FMLA leave. That's true even though she wasn't eligible for leave when she was fired.

Such a termination may also trigger ADA liability under the "regarded as disabled" provisions of the law.

Recent case: About six months after she started her job, Michele informed her supervisors she had been scheduled to have a hysterectomy to prevent possible cancer. The employer said she could not take FMLA leave because she wasn't yet eligible, but would be after her one-year anniversary. Michele postponed the scheduled surgery.

Then, a few months later, Michele put in another request to take FMLA leave for surgery as soon as she became eligible. She was terminated before the wait was up.

She sued, alleging both interference with her FMLA leave rights and disability discrimination under federal and Pennsylvania law.

The court said she had FMLA protection because she was requesting leave in the future. It said firing her to prevent her from reaching the one-year milestone violated the FMLA.

Plus, it said her request for time off for surgery to prevent cancer could be the basis for a regarded-as-disabled claim. That's because one interpretation of the employer's actions was that it terminated her, believing her underlying condition was disabling if untreated. (*Sine v. Rockhill Mennonite Home*, ED PA, 2017)