

# Beware small changes that could be retaliation

Punishing a worker for using FMLA leave is illegal retaliation—and the punishment doesn't have to be something big like termination. Even seemingly minor acts can qualify as retaliation if they would dissuade a reasonable worker from using FMLA leave in the first place.

In a recent case, cutting a shift from an employee's schedule and opposing her bid for unemployment benefits were both deemed to be retaliatory.

**Recent case:** Edith was a part-time hourly corrections officer, working for Chemung County several days per week. She had enough tenure to qualify for FMLA leave.

Edith requested FMLA leave to care for her chronically sick child on Tuesday nights when she could not arrange for a caregiver. She was approved to take intermittent leave and to be removed from the Tuesday evening shift. However, she was also taken off the Sunday shift, something she had not requested.

She eventually arranged for Tuesday child care and asked to be put back on the Tuesday and Sunday shifts. However, the county turned her down. She applied for unemployment compensation, but the county opposed her application.

Edith sued, alleging retaliation for taking FMLA leave.

The court said she had a case. It determined that a reasonable employee might be dissuaded from using FMLA leave if she knew she would have other shifts removed from her schedule and if she knew she would have to fight to get unemployment compensation benefits for the lost shift. (*Jordan v. County of Chemung et al.*, WD NY, 2017)

**Final note:** The county tried to argue the Sunday and the Tuesday shifts were a "package deal." But other employees worked just Sunday and not Tuesday. There was no indication it would have been impossible to allow Edith to work on Sundays but not Tuesdays.