

# Remind bosses they must never criticize employees for taking FMLA-covered leave

Avoid FMLA-related lawsuits by warning managers and supervisors that they should never gripe about employees missing work because of an FMLA-qualifying absence.

Employees who find themselves criticized for lower productivity or missed deadlines because they were out may have a legitimate FMLA interference or retaliation claim. That's true even if the employee never asked for FMLA leave and the employer therefore never officially granted such leave.

**Recent case:** Jennifer, who worked for QVC for several years, has arthritis in both hands. Her doctors recommended surgery, and Jennifer told the company she needed time off. Her request was granted, but neither Jennifer nor the company made any reference to the FMLA.

When Jennifer returned to work, she had to take intermittent leave for physical therapy. Her supervisor always approved the leave, but also frequently complained that she wasn't at work enough. Then Jennifer needed another operation. She returned to more criticism. When she requested time off for a third surgery, her performance rating was downgraded. The company then terminated her for poor work.

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

The court said her case could go forward as an interference claim. It didn't matter that she had never asked for nor been approved for FMLA leave. What mattered was that she qualified for that leave and had evidence she had been criticized for taking time off for a covered serious health condition. (*Saller v. QVC*, ED PA, 2017)