

Disciplining disabled worker for absenteeism? Make sure she knows your rules

When their medical conditions flare up, disabled employees may need to take frequent time off as intermittent FMLA leave. Those absences can make it hard to manage work that need to get done.

However, FMLA leave is a right. It is essential to grant FMLA leave when eligible employees need it.

At the same time, it is perfectly legal to require employees to follow specific procedures for using leave. Just make sure employees understand those rules.

Recent case: Wanda worked for the Temple University Health System as an access specialist at the call center, which operates 24/7. She handled phone calls from health care professionals, including emergency calls when medical providers needed to get in touch with doctors on call to deal with urgent medical problems. She always worked the overnight shift—midnight to 8:30 a.m.

Her position was critical, as patients' lives sometimes depended on her.

Wanda has long suffered from migraine headaches, making her sensitive to bright light.

She also has diabetes and developed two complications:

- Diabetic ketoacidosis, a potentially life-threatening condition that causes sweating, nausea, diarrhea, shakiness and severe pain
- Gastroparesis, which results in delayed digestion when food doesn't move from the stomach into the intestine, causing nausea, abdominal pain and vomiting.

Over a five-year period as her condition waxed and waned, Wanda often asked for and received FMLA leave.

Sometimes she took several weeks off, but usually she used an intermittent leave certification to call off when her condition prevented her from coming in. For example, when she had nausea, vomiting or diarrhea, she would try to find someone to take her shift and then inform her supervisor about the change. When she could not find someone, she was still granted time off. She was also allowed to leave work early when her condition warranted, again after letting her supervisor know so her calls could be routed elsewhere.

Unrelated to her illnesses, Wanda had performance problems. She had been written up for various infractions, including providing incorrect information to callers and frequently arriving late for her shift when there was no medical reason.

She was placed on a performance improvement plan and told that because she had accumulated eight tardy incidents, she was in danger of termination. Temple has a 10-strikes-and-you're-out attendance policy.

Then a nurse complained to Wanda's supervisor that he had been having trouble getting through to the call center. The supervisor reviewed Wanda's computer log-in record and discovered an almost two-hour period when she wasn't logged in. When confronted, Wanda said she had been in the bathroom vomiting, but hadn't informed anyone.

A final absence occurred when Wanda's supervisor noticed she hadn't returned from her regular break. He found her in a darkened conference room, under a blanket with her eyes closed. Wanda denied sleeping, and said she was dealing with symptoms related to her migraines.

Wanda was fired. She sued, alleging that she had really been terminated because of her disability.

But the court dismissed her case. It reasoned that Wanda not only knew how to request protected FMLA intermittent leave, but also that she had received such leave numerous times before. (*Arana v. Temple University Health System*, ED PA, 2018)