

# Past good reviews may sink ADA/FMLA defense

When an employee who has received excellent reviews asks for a disability accommodation, firing her for poor performance is bound to backfire.

**Recent case:** Brenda earned good reviews and regular promotions. Then she was diagnosed with lupus and took FMLA leave. On return, she asked for reasonable accommodations, including working from home as needed. The request, with some modifications, was granted.

But two months later she was fired for poor performance even though she never went through the employer's progressive discipline process. She sued, alleging retaliation for taking FMLA leave.

The court said her case could move forward, since a jury could believe that she was really fired for taking leave and requesting accommodations. Weighing against the employer: Brenda's good past performance, and the company's failure to use progressive discipline. (*Johnson v. City of Tyler*, ED TX, 2018)