

# Absences may disqualify disabled employee

Employees who suffer from disabilities as defined in the ADA or serious health conditions as defined in the FMLA enjoy some job protections. But those protections are not unlimited.

Protections include the right to reasonable accommodations to perform the essential functions of a job under the ADA and the right to return to one's job or an equivalent one after taking FMLA leave.

However, an employer may be legally entitled to fire an employee whose condition means she will be frequently absent following FMLA leave or can't perform essential functions of the job because of disability-related absences. Here's how that played out in a recent case.

**Recent case:** Joanne took FMLA leave for a serious health condition. Her doctors certified she would need to continue taking time off for additional treatment once she returned to work.

Her employer concluded that Joanne could not return to her job as a supervisor because continued absences would mean she was not qualified to perform the job. After all, supervision requires being present at work. Joanne was terminated and she sued.

The employer argued it could not come up with an accommodation that allowed Joanne to miss work without advance notice and still supervise subordinates. Thus, it reasoned, Joanne was not a qualified employee under the ADA, nor was she entitled to reinstatement to a job that she could no longer do due to continued absences.

The court agreed and dismissed Joanne's lawsuit. (*Ogden v. PUD*, 9th Cir., 2018)

**Final note:** For jobs that require a worker's physical presence, attendance remains an essential function. Yes, the worker may be entitled to 12 weeks of FMLA leave until that leave has been exhausted. But she may not always get her job back.