

Even with FMLA, enforce no-show/no-call rule



Employers can and should set reasonable standards for how employees let their bosses know they won't be coming to work. Those rules can require calling in before the start of a shift if the employee is ill or has a medical emergency, even if it may be covered by the FMLA.

Unless the employee is incapable of calling because of exigent circumstances, failing to follow call-off rules may be willful misconduct. And if the employee is terminated for a no-show/no-call violation, she may not be eligible for unemployment compensation benefits.

Recent case: Latonia, who worked as a lab technician for Regions Hospital, had a long record of unscheduled absences and tardiness.

However, she was approved to take intermittent FMLA leave as needed. When she did, none of those absences were counted against her.

Then, after being written up for five unscheduled absences in 12 months, Latonia was warned that she needed to tell the person in charge of her shift and the FMLA administrator before a scheduled shift begin if she wanted the time off to be covered as FMLA leave.

One day, Latonia took her daughter to the emergency room the day before a scheduled shift. She did not appear for that shift the following morning, even though the time would have been FMLA-covered. Nothing prevented her from calling in.

She was warned that if she violated the no-show/no-call policy again, she would be fired. Shortly afterward, she missed the beginning of a shift and called in two hours later, explaining that she had overslept. The hospital terminated her and she applied for unemployment benefits.

She did not get the benefits because her failure to call in amounted to willful misconduct. (*Rolbiecki v. Regions Hospital*, Court of Appeals of Minnesota, 2018)