

# Sharks in the Water: Employers Beware of Technical FMLA Violations

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**Geri Lynn Arrindell:** An employee who complained of a major headache left work and went to a local health care clinic where a physician assistant diagnosed the employee with high blood pressure. The physician assistant provided the employee with a signed note indicating he could return to work in four days. The employee promptly took the note to his employer; however, the employer rejected the note based on concerns that it was falsified. The employee obtained a total of three notes from the clinic and the employer rejected each note. The clinic refused to give a more detailed explanation for the employee's absence. The employee was suspended and then terminated for altering, falsifying or forging the work excuse.

The employer never provided the employee with notice of his Family Medical Leave Act ("FMLA") rights and obligations, and no such notice was included in the employee handbook.

The employee sued under the FMLA alleging that his employer retaliated against him for taking protected FMLA leave, failed to reinstate him after a period of protected leave, otherwise unlawfully interfered with his FMLA rights.

There are three categories of FMLA claims:

- entitlement claims, in which the employee alleges a denial of a benefit to which he was entitled under the statute;
- discrimination claims, in which the employee alleges that the employer discriminated against him in the terms and conditions of employment because the employee exercised rights to which he was entitled under the FMLA; and
- retaliation claims, in which an employee alleges that the employer took adverse action against him for opposing a practice made unlawful under the FMLA.

The court evaluated the employee's FMLA claims as "entitlement" and "discrimination" claims. For an employee to succeed on an entitlement claim the employee would need to establish that he was entitled to FMLA leave and reinstatement. Additionally, to succeed on a discrimination claim an employee must show he was entitled to leave under the FMLA.

The issue here was whether the terminated employee was entitled to FMLA leave due to his high blood pressure. To be eligible the employee had to show that his disease constituted a serious health condition. Although the physician assistant prescribed blood pressure medication, when the employee saw his regular doctor the prescription was not renewed and the employee's regular doctor indicated that the employee's blood pressure could be controlled through exercise.

The district court found in favor of the employer and dismissed the lawsuit. The employee appealed and the Eighth Circuit affirmed the dismissal on the grounds that the employee did not demonstrate how any alleged technical violation under FMLA could have prejudiced the employee since his condition was not a serious health condition and it did not qualify him for FMLA leave in the first place.

This case (*Kendrick Johnson v. Wheeling Machine Products*) highlights the importance of employers being properly educated and advised on their obligations, and employee's rights under the FMLA. Here, the employer dodged a technical violation because the employee was unable to establish the seriousness of his health condition in accordance with the claims raised in the employee's complaint.

For more information on the Family Medical Leave Act, see our full archive of FMLA blog entries.