Family And Medical Leave Act: Court Upholds Nurse's Rights.

A nurse was terminated for attendance issues after six years at the hospital.

Three years before her termination she submitted the hospital's human resources department's standard form requesting one year of prospective intermittent leave, pursuant to the US Family and Medical Leave Act (FMLA) as needed for a heart-rhythm abnormality known as Wolff-Parkinson-White Syndrome (WPW).

She was approved, contingent on providing a physician's note each time she missed work.

After the one year passed she applied again and was approved for another year of prospective FMLA leave for the same condition with the same stipulation as to physician's notes.

During this time period she also accumulated enough unexcused absences to place her on the brink of termination.

Medical Emergency at Work Terminated for Unexcused Absence

One day while at work the nurse told her supervisor she had to leave because she thought her heart was beating abnormally. She was given permission to leave and went to the E.R. at another hospital nearby.

A physician worked her up for WPW, chest pain and ventricular bigeminy.

The nurse phoned and said she was sick and would not be coming to work for a few days. When she returned she was terminated for unexcused absences.

Employer's Duty to Inquire Whether FMLA Applies

The US District Court for the District of New Jersey ruled the nurse was entitled to her day in court for a jury to decide if she was a victim of employer interference with her FMLA rights.

With her history of previous periods of approved FMLA leave for her heart-rhythm abnormality and having told her supervisor that day she needed to go to the E.R. for her heart-rhythm abnormality, her employer should have realized the nurse was potentially eligible for FMLA leave.

Under the circumstances, the nurse's employer had the responsibility to request additional information to determine if FMLA leave was appropriate, and not simply fire her. **Fitzgerald v. Shore Memorial, 2015 WL 1137817 (D. N.J., March 13, 2015).**

When it is unclear whether the US Family and Medical Leave Act (FMLA) applies, the employer has the responsibility to inquire further to determine if the employee's absence qualifies for leave under the FMLA, assuming the employee has communicated to the employer that a serious health condition prevents him or her from doing his or her job.

The FMLA allows an eligible employee intermittent leave in separate blocks of time due to a single qualifying serious health condition, if medically necessary.

Intermittent leave may include time periods from one hour to several weeks. Examples may include leave taken for a single appointment or for regular ongoing medical treatments for a serious health condition.

An employer may not deny leave for a serious health condition to an employee who is eligible, nor may an employer retaliate against an employee who exercises rights under the FMLA.

To have rights under the FMLA, the employee must inform the employer that the employee is using FMLA leave, in advance or as soon as practicable.

UNITED STATES DISTRICT COURT
NEW JERSEY
March 13, 2015

Pregnancy Discrimination: Nurse's Case Dismissed.

After a series of disciplinary problems an LPN who was pregnant was terminated following a verbal altercation with a female co-worker on the job.

The co-worker, who was not pregnant, was issued a final warning but was not terminated.

The terminated LPN sued her former employer for pregnancy discrimination.

A pregnant employee has circumstantial evidence of pregnancy discrimination if she was disciplined more harshly for the same offense compared to a similarly situated non-pregnant employee.

UNITED STATES DISTRICT COURT
OHIO
March 10, 2015

The US District Court for the Southern District of Ohio dismissed the LPN's case.

In general, one way an employee with a protected characteristic like race, age, nationality, religion, disability or pregnancy can prove discrimination is to show that he or she was disciplined more harshly for the same offense compared to a similarly-situated employee without the same protected characteristic.

The two nurses were not similarly situated, as that phrase is used in employment discrimination cases, the Court ruled.

The pregnant LPN who was terminated was already on final-warning status due to prior disciplinary problems when the incident with her co-worker triggered her termination.

The non-pregnant co-worker who was not terminated was a new-hire with no disciplinary history. She was bumped ahead two steps in the progressive discipline process to final-warning status, but was not fired.

Their unequal treatment did not amount to discrimination against the pregnant nurse. **Seig v. Mercy, 2015 WL 1036085 (S.D. Ohio, March 10, 2015).**