

Family And Medical Leave Act: Nurse Ruled Not Eligible For Leave.

A licensed practical nurse sued her employer because she was terminated when she requested maternity leave.

Her lawsuit alleged her employer violated the US Family and Medical Leave Act (FMLA).

Only an eligible employee has rights under the Family and Medical Leave Act.

The FMLA defines an eligible employee as one who has been employed for at least twelve months by the employer and has put in at least 1,200 hours of service with such employer during the previous twelve-month period.

UNITED STATES DISTRICT COURT
KANSAS
July 29, 2005

The US District Court for the District of Kansas pointed out she had only worked for her employer from April 12, 2003 until she was terminated February 18, 2004. She did not have twelve months seniority and was not covered by the FMLA.

However, the court did point out that the courts have not ruled definitively whether an employee can give notice *before* becoming eligible for FMLA leave about his or her intention to take leave *after* becoming eligible and thereby come to have rights that are presently protected by the FMLA. The nurse did not try that so her attorneys could not raise that argument later in court; it was a moot point the court could not properly rule upon in this case. Kolarik v. Alterra Healthcare Corp., 2005 WL 1842752 (D. Kan., July 29, 2005).