

## Family And Medical Leave Act: Court Finds That Nurse's Legal Rights Were Violated.

A hospital staff nurse was terminated after she requested a medical leave to have surgery on her wrist for a non-job-related problem.

Her supervisors were apparently getting tired of having to schedule around her repeated but legitimate requests for medical leaves for various health conditions.

The nurse sued her former employer for violating her rights under the US Family and Medical Leave Act. The judge in the US District Court for the Northern District of Indiana endorsed the jury's verdict in her favor over objections by the hospital's attorneys that the verdict was contrary to the evidence.

The judge saw it as an open-and-shut case. The nurse was not able to take leave to which she was entitled because she was terminated from her position shortly before her leave was to start. Her vested rights were interfered with, and that was that.

### **Workplace Rules Were Not Enforced Uniformly**

The hospital's lawyers tried to complicate the case by saying that the nurse was actually terminated, not for taking yet another medical leave, but for violating the hospital's policies against sexual harassment in the workplace.

She apparently did participate in inappropriate sexually explicit conversations with her co-workers on the job in the neonatal intensive care unit.

Even if that was true, as it apparently was, none of the other guilty parties were ever warned or disciplined, much less terminated for their own clearly prohibited misconduct.

When work rules are not applied uniformly across the board with all employees, an employee caught up in a dispute over a work rule infraction can often argue convincingly that he or she has been singled out for special treatment for an underlying reason that has nothing to do with the work rule in question, lending credence to the employee's case if the employee is claiming in reality to be a victim of discrimination or retaliation. **Staples v. Parkview Hosp.**, 2009 WL 4885156 (N.D. Ind., December 16, 2009).

***An employee has the right to sue his or her employer for violation of the US Family and Medical Leave Act (FMLA) if:***

***The employee was entitled to time off from work because the employee had a serious medical condition that made the employee unable to perform the functions of the job;***

***The employee gave the employer proper notice of the need for time off from work; and***

***The employer in any way interfered with, restrained or denied the employee's entitlement to take time off.***

***It is not relevant to delve into the motivation or the state of mind of the employee's supervisors. If action is taken which interferes with the employee's rights, the employer can be held liable.***

***It was probably true that the nurse in this case did violate the hospital's policies against sexual harassment by going along with her co-workers in sexually explicit conversations on the job. But none of the others were disciplined, much less fired, only the nurse in question.***

UNITED STATES DISTRICT COURT  
INDIANA

December 16, 2009