

Family Leave Denied For Child's Illness: Court Holds Hospital And Supervisors Liable.

The Family and Medical Leave Act was enacted by the U.S. Congress in 1993, to balance the needs of the workplace with the needs of employees to take leave for significant medical conditions and for compelling family reasons, according to a recent ruling by the U.S. District Court in Illinois.

In addition to providing an eligible employee with up to twelve weeks of unpaid leave to care for a spouse, son, daughter or parent, if the spouse, son, daughter or parent has a serious health condition, the Family and Medical Leave Act also ensures that an employee who exercises the right to take such leave will be restored to his or her former position or an equivalent one upon returning to work.

All employers with fifty or more employees are subject to the Federal Family and Medical Leave Act.

If an employer violates the law, the employee may sue the employer to obtain a court order of reinstatement, and for an award of compensatory damages, back pay and attorney fees.

An employee denied his or her rights under the Family and Medical Leave Act can sue a supervisor who acts for the employer in denying such rights, in addition to suing the institution or facility by which he or she is employed.

In this case, an employee, who had had ongoing difficulties with her supervisors over absenteeism, was able to document with a doctor's letter that it was necessary for her to stay home several weeks with her two children who had chickenpox.

The employee had valid grounds to file a lawsuit against the hospital and against her supervisors, the court ruled, when she was terminated for taking leave to care for her children. **Freemon vs. Foley**, 911 F. Supp. 326 (N.D. Ill., 1995).

Post-Traumatic Stress Disorder: Employer Need Not Make Reasonable Accommodation To Home Health Aide's Disability, Court Says.

The home health aide was terminated after extreme difficulty with an assignment working alone in the home of a male patient.

She experienced significant anxiety and an exacerbation of her post-traumatic stress disorder symptoms. Her PTSD had its origin in past sexual victimization.

After being terminated, the aide filed for Social Security disability benefits for total and complete disability from gainful employment as a result of her PTSD symptoms. The Social Security Administration accepted her claim and awarded monthly permanent disability benefits.

The aide then sued her former employer for failure to make reasonable accommodation to her disabling PTSD condition. Since she was completely disabled from employment, due to this condition which did not arise from her employment, she was not a disabled individual otherwise qualified for employment, and thus was not entitled to reasonable accommodation.

UNITED STATES DISTRICT COURT,
NEW HAMPSHIRE, 1995.

A home health aide filed suit against her former employer under a Federal law which prohibits employers from discriminating against otherwise qualified disabled individuals who, with or without reasonable accommodation, are able to perform the essential functions of the position in question without endangering their own health and safety or the health and safety of others.

The suit was filed under the Rehabilitation Act of 1973, a Federal law which predated the Americans With Disabilities Act which has been in effect since 1992. The legal provisions of the two laws are essentially the same, except that the Americans With Disabilities Act significantly enlarged the number of employers subject to Federal disability anti-discrimination laws.

The U.S. District Court in New Hampshire, in explaining its decision, centered its attention on the claim the home health aide in question made to the Social Security Administration in her application for permanent disability benefits. She claimed to be suffering from overwhelming symptoms of anxiety related to past sexual victimization which totally and completely disabled from her from gainful employment. The court noted that her claim was accepted by the Social Security disability examiners as genuine.

A person totally disabled from employment cannot claim reasonable accommodation from an employer to a totally disabling condition, according to the court.

The court did not rule whether a caregiver who has anxiety symptoms only when caring for male patients might be entitled to care only for females, as a reasonable accommodation. However, the court seemed to imply that it would not support that conclusion. **Simo vs. Home Health & Hospice Care**, 906 F. Supp. 714 (D.N.H., 1995).