

FMLA Insights

Guidance & Solutions for Employers

Employee Who Abused FMLA Leave Around the Holidays Properly Terminated

By Jeff Nowak on August 26, 2011



Employers often complain that they see an uptick in the use of sick leave and FMLA leave around the holidays. In the case of [Southwest Airlines](#), however, one employee clearly took FMLA misuse a bit too far.

Douglas Rydalch was a reservation sales agent for Southwest. When Southwest closed its reservation center in Salt Lake City where Rydalch worked, it transferred him to Houston. However, his family remained in Utah. In 2004, Rydalch injured his back, and these issues continued through 2007. Curiously, Rydalch's back issues tended to flare up on the days just before or after his previously scheduled time off -- 35 times, to be precise. What's worse, he often used FMLA leave on important dates and holidays. In 2007, for example, he used FMLA leave in conjunction with July 4, Labor Day, Thanksgiving Day, Christmas Day, New Years Eve and his own birthday. I'm not kidding.

Southwest caught onto the pattern of Rydalch's absences and began monitoring his FMLA use. It learned that he had a habit of taking flights to and from Utah on the days he requested FMLA leave. On Christmas Eve 2007, Rydalch's supervisor learned that he again had taken FMLA leave and later learned that Rydalch had been out of town when he called in his absence. Upon further investigation, the supervisor determined that Rydalch booked a trip to Utah from December 22 to 27. Thereafter, it was not surprising when Rydalch also called off for a bad back on December 26 and 27, which were his next two scheduled work days. Southwest suspected that Rydalch misused FMLA leave in violation of the Company's attendance program. After an internal hearing was held regarding his FMLA use (pursuant to the bargaining agreement governing Rydalch's employment), Southwest terminated Rydalch's employment because he abused FMLA leave.

When Rydalch later filed a lawsuit claiming FMLA retaliation and interference, Santa was waiting at the courthouse steps with a lump of coal. In quickly disposing of his lawsuit, a federal court in Utah held that Southwest rightfully had an honest belief that Rydalch was abusing FMLA leave and that its termination decision was legitimate. See court decision here: [Rydalch v. Southwest Airlines](#) (pdf).

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Southwest Airlines isn't considered one of the [best places to work](#) for nothing. An employee who not only abuses FMLA leave, but does so to effectively extend personal time off, raises the ire of co-workers. Their actions can only have a negative impact on employee morale. When you dare to take action as Southwest did in this instance, you not only rid yourself of FMLA abuse. You also *enhance* employee morale. Employers can learn much from Southwest's response here:

1. To some extent (whether great or small), FMLA abuse affects every workplace. Consequently, employers must be vigilant to identify patterns of abuse and act swiftly to investigate and stop it from occurring. The costs of ignoring FMLA abuse are far more dear -- they impact employee morale and inflate overtime costs because other employees are left to pick up the slack.
2. Where FMLA abuse is suspected, an employer has every right to investigate the circumstances and take action if it *honestly* believes that the employee has engaged in FMLA abuse. All too often, employers in Southwest's situation feel powerless. They live with the misconception that they cannot question the employee's reason(s) for leave or investigate any suspicious activity on the employee's part. To the contrary, the FMLA regulations give employers fairly broad rights to inquire about an employee's reasons for leave and monitor patterns of suspected leave misuse to ensure that the employee's leave is legitimate.
3. Where possible, consider having an objective participant review and play a role in the investigation and disciplinary action to further bolster the employer's legitimate, non-discriminatory reason for taking action against the employee. Not all employers have the level of due process that Southwest's bargaining agreements afford, but courts tend to give even greater deference to an employer's termination decision where objective decisionmakers are part of the process.

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