

Curbing FMLA Abuse: Policies Restricting an Employee's Travel While on Paid Sick Leave

By Adam Santucci

Posted on September 27, 2011

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So your employee recently posted photos of herself lounging poolside with margarita in hand while out on FMLA leave. Can you do something more than just compliment her nice tan?

Earlier this year, in the case of [Pellegrino v. Communications Workers of America \(PDF\)](#), a Pennsylvania federal court answered yes. The court upheld the termination of an employee for violating a work rule that restricted employee travel outside the immediate vicinity while on FMLA leave.

Under a policy in its employee handbook, CWA provided sick pay to eligible employees on approved medical leave. Such wage replacement, however, was subject to certain restrictions. Specifically, employees were required to remain in the immediate vicinity of their homes while on sick leave unless they were seeking treatment or attending to ordinary and necessary personal or family needs. Employees also were permitted to leave the immediate vicinity if they received express permission from CWA.

Denise Pellegrino, a CWA employee, was out on approved FMLA leave following surgery. She also received sick leave pay under the CWA policy. While out on leave, Pellegrino took an unapproved week-long vacation to Cancun, Mexico. CWA learned of Pellegrino's travels and fired her; at the time of her termination, Pellegrino had yet to return from FMLA leave. Pellegrino sued claiming that CWA had unlawfully interfered with her right to take FMLA leave. CWA claimed that her termination was unrelated to her status under the FMLA, but rather because she violated its leave policies. CWA said it would have terminated Pellegrino regardless of whether or not she was on FMLA leave.

While the court agreed that Pellegrino was entitled to unpaid leave under the FMLA, it found no evidence that CWA's sick leave policy or its decision to terminate her employment while she was still out on leave improperly interfered with her rights under the FMLA. In fact, the court noted that to the extent the CWA policy provided a wage

supplement, it might have actually encouraged employees to take advantage of their rights under the FMLA.

In its ruling, the court noted that "the FMLA does not shield an employee from termination if the employee was allegedly involved in misconduct related to the use of FMLA leave." Similarly, companies have the right to create and enforce leave policies, including policies designed to rein in FMLA abuse, so long as such policies do not abridge an employee's rights under the FMLA. Where a sick leave policy has been adopted, the employer has the discretion to enforce it through means such as termination. The court further noted that, even in the absence of an explicit policy limiting employee travel while out on FMLA leave, an employer might reasonably terminate an employee for taking a vacation while receiving sick leave pay.

Sick leave policies similar to CWA's were previously upheld by courts in Pennsylvania. Such policies have included requirements that employees absent on sick leave stay at home during working hours, that employees obtain medical authorization and employer permission to leave the home, and that employees be subject to calls or visits by their employer.

The *Pellegrino* case underscores the court's growing concern with FMLA abuse and provides precedent for restrictive sick leave policies. However, an employer who suspects that an employee is abusing FMLA should conduct a thorough investigation and allow the employee to explain his/her conduct before taking immediate employment action.

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