

## FMLA: Nurse's Interference Lawsuit Dismissed By Court.

***The US Family and Medical Leave Act (FMLA) makes it unlawful, and grounds for a civil lawsuit, for an employer to interfere with, restrain or deny an eligible employee's right to a total of twelve weeks of unpaid leave during any twelve-month period, if the employee has a serious health condition that makes the employee unable to perform the functions of the employee's position.***

***FMLA leave includes visits to a medical provider for symptoms that are eventually diagnosed as a serious health condition, even if at the time of the initial medical appointments the illness has not been diagnosed or its degree of seriousness determined.***

***In this case the employer did not interfere with that diagnostic process. The employer gave the nurse time off. The fact is irrelevant the employer did not designate it as FMLA leave.***

***The nurse's fluid weight gain and edema did not affect her ability to perform the functions of her position, nor did she ever request time off due to those conditions for anything more than diagnostic medical appointments.***

UNITED STATES COURT OF APPEALS  
EIGHTH CIRCUIT  
April 7, 2015

A nurse was terminated from her employment at a skilled nursing facility right after a short hospital emergency room visit for atypical chest pain.

The reason given to her was a long series of job performance deficiencies involving completion of overdue care plans, investigation and completion of reports for patient call-light complaints, daily skin examinations for her patients and a new patient's admission paperwork.

The nurse had been having ongoing health issues with fluid weight gain and pitting edema. Never did the nurse have to miss work because she was unable to work due to those problems.

Time off was necessary for medical appointments with her primary care physician and with medical specialists for diagnostic testing to rule out kidney failure, congestive heart failure, a thyroid problem or side effects of different blood pressure medications the primary care physician substituted to try to resolve the problem.

The nurse's employer allowed her time off for all of the testing procedures. The diagnostic testing resulted only in a diagnosis of weight gain and edema of uncertain etiology.

After her termination the nurse sued her former employer for alleged interference with her rights under the US Family and Medical Leave Act (FMLA) and disability discrimination.

The US Court of Appeals for the Eighth Circuit (Iowa) dismissed her case.

### **No Serious Health Condition**

There was more than one fatal flaw in the logic behind the nurse's case.

The visit to the emergency room that immediately preceded her termination was not for the fluid-retention problem the nurse claimed as her FMLA-qualifying serious health condition.

The fluid retention problem itself was not a serious health condition as it never rendered the nurse unable to do her job for at least three days. Fluid retention and pitting edema can be possible signs of serious health conditions like kidney failure or congestive heart failure, for which she was entitled to and was given time off for diagnostic testing. Dalton v. Manorcare, \_\_\_ F.3d \_\_\_, 2015 WL 1527737 (8th Cir., April 7, 2015).

## Seventh Day Adventist: Court Discusses Nurse's Rights (Cont.)

*(Continued from previous page.)*

The nurse finally was terminated after she walked off the job without permission at approximately 12:30 p.m. on a Friday afternoon to take her child to the doctor.

She sued, among other things, for religious discrimination for not being allowed to observe her Friday-to-Saturday sunset-to-sunset Sabbath as mandated by her Seventh Day Adventist beliefs.

***The nurse's employer ignored her rights when her new supervisor refused to continue the existing accommodation to the nurse's Sabbath observance.***

***The hospital has 700+ beds and employs over 3,500 people, giving it the flexibility, without undue hardship to the hospital's business, to schedule others to work in her place in exchange for her picking up extra Sunday shifts as she had been doing in the past.***

UNITED STATES DISTRICT COURT  
ALABAMA  
April 7, 2015

The US District Court for the Southern District of Alabama ruled the hospital was wrong not to honor the nurse's right to reasonable accommodation to her religion. Her special scheduling arrangement posed no undue hardship to the hospital.

However, walking off the job, the last straw in her difficult history of attendance problems, gave her employer a legitimate non-discriminatory reason to terminate her employment.

Even though working the last hours of her work shift that day would have violated her religious beliefs, she had no right to walk off the job without permission from her supervisor. Johnson v. Mobile, 2015 WL 1538774 (S.D. Ala., April 7, 2015).