

## FMLA: Eligibility Affected By Time Worked During Breaks.

A labor and delivery nurse who worked part-time twenty-four hours per week asked to use her vacation time to travel to Cancun, Mexico for a friend's wedding.

Her supervisor denied her request, pointing to problems with nursing coverage on the unit.

Then the nurse asked for and was granted Family and Medical Leave Act (FMLA) leave to care for her husband who had been scheduled for back surgery. While on leave she traveled with her husband to Cancun for the friend's wedding.

On her return the hospital fired her for misusing FMLA leave for a vacation. Her union grievance resulted in a ruling that the hospital did have grounds to fire her.

Then the nurse sued the hospital for wrongful interference with her FMLA rights. In its defense the hospital said she did not have the necessary 1,250 hours of service in the prior twelve month period and thus had no FMLA legal rights.

### **Court Must Interpret Hours of Service For FMLA Eligibility Uncompensated Work During Breaks**

The US District Court for the District of Connecticut ruled for the hospital. The hospital's KRONOS timekeeping records for her showed only 1,098 hours and 30 minutes during the prior twelve months. In the absence of other evidence the employer's time records are conclusive.

The nurse argued nevertheless she was required at times to work through her lunch and other breaks. She also took time at home to prepare for her shifts which she claimed should have been counted as hours of service toward her FMLA eligibility.

The Court did not categorically dismiss the argument that uncompensated time working during breaks counts toward FMLA eligibility.

The problem was the nurse had no actual documentation of the specific dates and times she was compelled to work through her breaks. If she had documentation, the Court would have looked at it.

The time she claimed she spent at home preparing for her shifts, however, was too vague to count as actual hours of service at the gain of her employer. **Tavares v. Lawrence Mem. Hosp.**, 2015 WL 2090493 (D. Conn., May 5, 2015).

***The US Family and Medical Leave Act (FMLA) defines an eligible employee as one who was employed for at least 1,250 hours of service during the twelve-month period prior to the date that leave is to start.***

***The term "hours of service" includes only the time actually worked in the service and at the gain of the employer.***

***Hours of service are not necessarily tied to the employer's method of record-keeping or a compensation agreement that does not accurately reflect all of the hours an eligible employee has worked for or been in service to the employer.***

***However, in the absence of actual evidence to the contrary, the Court will accept the hospital's computerized records of when the nurse punched in and punched out as conclusive evidence of the hours she was present and actually worked for her employer.***

***An eligible employee is entitled to twelve weeks unpaid leave in any twelve-month period for a serious health condition that keeps the employee from working or to care for a child, spouse or parent with a serious health condition.***

UNITED STATES DISTRICT COURT  
CONNECTICUT  
May 5, 2015

## Misconduct: Nurse Failed To Pass Meds On Time, Firing Justified.

An RN was fired from her job in a nursing home for failing to pass medications on time to two residents the same day.

Apparently there was a history of medication errors, but the employer did not attempt to use that as further justification.

The nursing home's policy was that medications had to be given no later than two hours after their scheduled times.

The nurse in this case tried to give an 8:00 a.m. antibiotic at 4:00 p.m. as she was leaving for the day but she was stopped by the p.m. nurse who was about to give the 4:00 p.m. dose. An 8:00 a.m. med for another patient was not given until noon.

***Lack of any actual harm to the patient is no defense.***

***Employee misconduct can harm a healthcare employer by interfering with the employer's mission to provide an environment free from neglect and by exposing the employer to potential malpractice liability, administrative sanctions and damage to its business reputation.***

APPELLATE COURT OF ILLINOIS  
April 10, 2015

The Appellate Court of Illinois ruled the nurse was terminated for misconduct.

The nurse argued she did not give the medications on time because they were not to be found in the patients' slots in the medication drawer. However, the medications were commonly given and were readily available from stock kept on the floor.

The Court rejected the defense that there was no actual harm to the patients. The nurse's neglect interfered with her employer's mission and exposed her employer to potential legal repercussions. **Naritoku v. Dept. of Employment Security**, 2015 IL App. 4th 140387 (April 10, 2015).