

Misconduct: Threat Toward Co-Worker Ruled Grounds For Termination.

According to the New York Supreme Court, Appellate Division, a verbal threat directed at a co-worker is grounds for a healthcare facility to terminate an employee for just cause. That is, the employee in this case was not entitled to unemployment following his dismissal.

A nursing assistant working in a nursing home got in an argument with a nurse over use of the copy machine. According to the court record, he told the nurse to, "watch her back and watch her car."

The Department of Labor referee concluded the nurse herself had not made any threatening comments toward the aide, that is, he was solely to blame. Claim of Perkins, 790 N.Y.S.2d 313 (N.Y. App., March 3, 2005).

Family And Medical Leave Act: Court Discusses Nurse's Right To Reinstatement.

The US Family and Medical Leave Act (FMLA) allows eligible employees to take a total of twelve weeks of leave during a twelve-month period for a serious health condition that makes the employee unable to perform the functions of the employee's position.

The FMLA also gives the employee the all-important right to reinstatement to his or her position upon returning from leave. But that right is not absolute.

Basically the employee's rights vis a vis his or her position are the same as if the employee had not taken FMLA leave.

If the employer can show for one reason or another that the employee would not have been employed at the time reinstatement would occur, the employee can be denied reinstatement. This may involve legitimate reductions in force, personnel reorganization, etc.

In this case the nurse's mental health at the end of her twelve-week leave was not appropriate to permit continued employment.

UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT
April 11, 2005

A registered nurse was employed by a hospital as a staff home health nurse. Her employment appraisals were above average for a period of time.

Her mental health status began to deteriorate after two family crises. Later there would be court testimony from her co-workers about sharp mood swings, excessive absenteeism and a general inability to complete assigned patient-care and administrative tasks.

The hospital administrator insisted she take a month's leave to "get herself together," after which her employment status would be re-evaluated.

The nurse went on leave but continued coming to work, bothering her co-workers and dressing and acting more inappropriate than before.

The decision was made to terminate her employment, effective at the end of her medical leave.

The nurse sued the hospital claiming a violation of the US Family and Medical Leave Act. The US Circuit Court of Appeals for the Eighth Circuit ruled her lawsuit should be dismissed.

Right to Reinstatement Is Not Absolute

The right to take leave under the FMLA would be meaningless without the right to be restored to employment at the end of the leave, the court noted. However, the FMLA only gives an employee the same rights at the end of a leave as the employee would have had if the employee had worked the whole time.

Changes can occur legitimately during an employee's leave that can mean that the employee's job will no longer be available when the employee's leave has ended, such as reductions in force, restructuring or, as in this case, the employee being no longer fit for duty.

The employer has the legal burden of proof to justify not restoring an employee to his or her former position. Throneberry v. McGehee Desha Co. Hosp., ___ F. 3d ___, 2005 WL 820313 (8th Cir., April 11, 2005).