

## FMLA: Nurse Awarded Damages For Violation Of Her Rights.

In its ruling the US District Court for the Middle District of Pennsylvania expressly drew attention to the fact that the nurse's immediate supervisor and the home office human resources director never had any specific training in Family and Medical Leave Act (FMLA) issues.

A registered nurse worked for a large corporation which has contracts to provide healthcare services in a number of correctional facilities.

The nurse was diagnosed by her physician with paroxysmal tachycardia in 2010. Her superiors at work did not know that.

On a Thursday morning in 2013 she reported for work but then before the start of her shift told her supervisor she had to go home because she was ill.

That afternoon the nurse emailed her supervisor to request the company's FMLA forms for her absence that day.

The next morning the supervisor emailed the forms to the nurse and asked if she also needed a short-term disability application. The nurse emailed back that she did not need a disability application.

First thing the following Monday morning the nurse saw her physician, who certified on the company's form that the nurse had had a bout of paroxysmal tachycardia, which was a serious health condition and required her to have missed work the prior Thursday. The doctor faxed the certification form to the nurse's supervisor.

Shortly thereafter the nurse was fired, on the grounds that this was her eighth unexcused absence. Having eight unexcused absences was grounds for termination under the prevailing union contract.

No one at the company who was involved in her firing had any knowledge that an FMLA leave request was pending.

The Court awarded the nurse substantial monetary compensation for violation of her FMLA rights.

She had a serious health condition and did everything that was required of her by her employer and by law, yet her rights were completely ignored.

The Court paid only passing attention to the issue of liability and devoted the bulk of its opinion to calculating the full measure of damages. **Poff v. Prime, 2015 WL 5822369 (M.D. Penna., October 1, 2015).**

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***An employer who wrongfully terminates an employee in violation of the employee's rights under the US Family and Medical Leave Act (FMLA) can be liable to the former employee for back pay, interest, other monetary losses and attorney fees.***

***The fired nurse did not seek out a new nursing position but instead ramped up her efforts to sell items on eBay and started a home improvement business with her son.***

***That was not an unreasonable effort at what the law requires by way of mitigation of damages.***

***Her former employer is still liable for the difference between what she was making at her job and what she earned in her new business endeavors.***

***The nurse also lost her health coverage when she was fired. Her former employer is liable for more than \$4,000 in uninsured health costs the nurse incurred.***

***The nurse is also allowed to charge her attorneys' fees to her former employer, rather than paying her attorneys out of her own pocket or as a percentage of her recovery as a contingent fee.***

UNITED STATES DISTRICT COURT  
PENNSYLVANIA  
October 1, 2015

## Leaving Early: Aide's Firing Ruled Justified.

A nurses aide working in a hospital told her supervisor she was not feeling well and needed to go home.

The aide was not given permission to go home, but instead was told to report to the employee health nurse. She went to see the nurse as she was instructed.

The employee health nurse told the aide she did not have a fever and was not contagious, gave her two Tylenol tablets and told her to follow up with her own doctor later if she still did not feel well.

The aide did not report back to her supervisor but simply left the premises and went home. Within days she was terminated for misconduct.

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***The employer's policy required an employee to provide the supervisor with documentation from the employee health clinic if the employee needed to leave work early due to illness.***

COURT OF APPEALS OF MISSISSIPPI  
September 29, 2015

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The Court of Appeals of Mississippi ruled the aide was terminated for just cause.

The Court pointed out that the aide, having worked for the hospital for eleven years, was well aware of the policy that she needed to obtain and provide her supervisor with documentation from the employee health clinic in order to get permission to leave work early due to illness.

The aide willfully decided not to abide by her employer's established procedure. The Court considered that employee misconduct serious enough to justify her termination for cause.

In the healthcare field, an employee leaving without permission can be considered patient abandonment, a more serious ethical violation than simply walking off a job where walking off would not affect or have the potential to affect vulnerable persons' health and safety. **Moore v. Department, \_\_ So. 3d \_\_, 2015 WL 5687871 (Miss. App., September 29, 2015).**