

US Family And Medical Leave Act: Nurse's Bonus Hours Do Not Count Toward Statutory Eligibility.

Nurses who agreed to work two twelve-hour shifts on weekends were paid by the hospital for sixty-eight hours each two-week pay period.

One of these nurses requested time off for carpal-tunnel surgery on one hand, was approved, took leave, had her surgery and returned to work.

Then she requested another leave for surgery on the other hand and was turned down. Her supervisors had decided in the mean time, although she was paid for more than 1,250 hours in the preceding twelve months, she had actually worked fewer hours than that and was, therefore, not covered by the FMLA as an eligible employee.

The nurse's case recently went against her in the US Court of Appeals for the Sixth Circuit.

To be eligible for FMLA leave an employee must have worked 1,250 hours in the preceding twelve-month period.

When nurses are paid for more hours than actually worked, as an incentive for weekend service, the extra hours for which they are compensated do not count toward the 1,250 hour threshold for the FMLA.

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT
May 2, 2007

The reference to 1,250 hours in the US Family and Medical Leave Act (FMLA) refers to hours actually worked, the court ruled.

The court also touched on the fact that the hospital could have gone back on its decision to approve her time off for the first surgery.

Department of Labor regulations do state that an employer cannot go back on a decision to approve FMLA leave even if it turns out the decision was made in error and the employee is actually ineligible for one reason or another. However, the US Circuit Courts of Appeal have ruled that particular regulation invalid as going beyond the rulemaking authority of the Secretary of Labor. Mutchler v. Dunlap Mem. Hosp., __ F. 3d __, 2007 WL 1263968 (6th Cir., May 2, 2007).