

# Fibromyalgia: Nurse Did Not Inform Supervisors Why Absent, Lost FMLA Rights.

***The US Family and Medical Leave Act (FMLA), among other things, entitles an eligible employee to take up to 12 weeks unpaid leave during any 12 month period for a serious health condition that makes the employee unable to perform the functions of the employee's position.***

***The employee must expressly to communicate to the employer, as soon as practicable:***

***That the employee has a serious health condition;***

***What the condition is;***

***That the employee is as a result unable to work;***

***That the employee wants to use unpaid FMLA leave as opposed to paid sick leave;***

***That the employee is and will be under a physician's continuing care; and***

***When the employee expects to be able to return.***

***The employee must stay in touch and update his or her status and, if requested, obtain and submit ongoing medical documentation.***

***Otherwise the employee gives up the protection of the FMLA.***

UNITED STATES DISTRICT COURT  
ILLINOIS  
January 5, 2007

After she had called in sick every day for a month a nurse was asked for doctor's notes.

Although her neck and lower back pain were diagnosed as fibromyalgia after about three weeks, her doctor's notes simply kept referring to generalized muscular neck and lower back pain and kept saying she needed another week off.

Three months after she first started calling in sick, when they finally got clarification of her diagnosis, human resources retroactively granted her the maximum limit of Family and Medical Leave Act (FMLA) leave eligibility, back-dated to the day she first started calling in sick.

When she tried to come back to work after yet another three months off without approved leave she was terminated for unauthorized absences.

The nurse sued the hospital for violating the FMLA, but the US District Court for the Northern District of Illinois dismissed the lawsuit as unfounded.

## **FMLA Requires Employee to Provide Notice To His/Her Employer**

The court ruled that just calling in "sick" does not fulfill the employee's legal obligations that are prerequisite to legal protection under the FMLA.

The employee must expressly communicate that he or she has a serious health condition, expressly say what the condition is and expressly say that he or she needs to take FMLA leave for a specified period of time, as best the employee can foresee what that time will be.

If requested, the employee must furnish medical documentation that the serious health condition exists, that the employee is consequently unable to work and that he or she is under a physician's continuing care for the condition.

The court also ruled that her fibromyalgia was not a disability because there were jobs outside nursing she could do. ***De la Rama v. Illinois Dept. of Human Services*, 2007 WL 54060 (N.D. Ill., January 5, 2007).**