

## Family And Medical Leave Act: Thirty-Days' Advance Notice Not Required When Employee Has Change Of Circumstances, Court Says.

**A** hospital unit coordinator was told by her physician to have breast reduction surgery. The surgery was medically indicated to relieve ongoing problems with breast inflammation and back pain. There was no dispute she was entitled to medical leave under the Family and Medical Leave Act.

However, the surgery was elective. It could be scheduled months in advance. The employee applied in mid-January for leave. Her employer approved her leave request in mid-February for surgery scheduled in mid-May, and her supervisors made arrangements to cover her position in May.

In mid-April, the employee was informed that after April 30, her health coverage would not cover a breast reduction. She arranged for the surgery at once and had it on April 26. She phoned her work the next day and explained she had just had surgery. She was told to report for work no later than April 29 or be fired. She was fired, and filed suit for violation of the Family and Medical Leave Act.

The lower Federal court took the position that a hospital owes its first duty to its patients and needs a full complement of staff at all times. The lower court said it was regrettable the hospital could not accommodate this employee. As this was not a medical emergency, the lower court felt the hospital had an absolute right to insist on thirty days' advance notice of an employee's need for medical leave.

The U.S. Circuit Court of Appeals for the Fifth Circuit (Mississippi) overruled the lower court. As little as one day's notice is all that is required, if the employee has had a legitimate change of circumstances and has given as much advance notice as is practicable, the court ruled. **Hopson vs. Quitman County Hospital and Nursing Home, Inc.**, 119 F. 3d 363 (5th Cir., 1997).

***When the need for medical leave is foreseeable, an employee must make an effort to schedule treatment so as not to disrupt the employer's operations unduly, subject to approval from the employee's or family member's treatment provider.***

***The employee is ordinarily supposed to provide the employer with no less than thirty days' notice before leave is to begin. If treatment is to begin in less than thirty days, the employee must provide as much advance notice as practicable.***

***Thirty days' advance notice of the need for medical leave may not be practicable because of a lack of precise knowledge when a needed treatment will begin, because of a medical emergency or because of a change of circumstances.***

***An unexpected change in the employee's insurance coverage taking effect in less than thirty days, making it necessary to schedule a procedure at once, is a change of circumstances.***

UNITED STATES COURT OF APPEALS,  
FIFTH CIRCUIT (MISSISSIPPI), 1997.

## National Origin Discrimination: Hispanic Aide's Case Dismissed.

**A** graduate of an employer-sponsored home health aide training course was a Spanish-speaking recent immigrant from Ecuador.

The aide was fired soon after going out on her first assignment, and she filed charges of national origin discrimination with the U.S. Equal Employment Opportunity Commission and with the state human rights commission. Both agencies ruled she had a legitimate grievance. She then elected to sue in the U.S. District Court for the Eastern District of New York, but the court sided with her former employer.

***The aide was to spend twelve-hour days in the home of a terminally ill home health client who needed tube feedings. She arrived four hours late one day, left two hours early the next day and falsified her time sheet so that she appeared to have been on duty her full shift both days.***

***This was a legitimate, non-discriminatory reason for firing this employee.***

UNITED STATES DISTRICT COURT,  
NEW YORK, 1997.

The court agreed it is every court's responsibility to be highly suspicious whenever a minority employee is singled out for adverse treatment. However, in this case, of more than twenty Hispanic persons in this aide's home health training class, only she had experienced any problems. The court further ruled that dereliction of a caregiver's responsibilities toward a vulnerable patient and falsification of employee time records are legitimate, non-discriminatory reasons for taking disciplinary action. **Sanyer vs. Kimberly Quality Care**, 971 F. Supp. 86 (E.D.N.Y., 1997).