

PUBLICATION

Watch Out Employees: Comply with Policies or Lose FMLA Rights

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In a victory for employers, a federal court said that an employer had the right to terminate an employee who failed to follow the Company's leave policy while taking intermittent FMLA leave.

The Kellogg USA, Inc. employee claimed that his termination was in retaliation and in interference of his FMLA rights — a right this employee exercised on approximately 90 separate occasions when he requested and was approved for continuing and intermittent FMLA leave. But the employee didn't want to be bothered with those pesky notification rules. The Company's attendance policy required the employee to report an absence to a call center service at least two hours prior to the start of the his shift. In addition, since the absence was intermittent FMLA leave, the employee was also required to notify the Company's third-party FMLA administrator of the absence by phone or through the Internet within 48 hours.

The employee first received a written warning when he did not notify the third-party FMLA administrator within 48 hours of his absence. A month later, the employee took three more intermittent leaves without notifying the FMLA administrator. Under the Company's leave policy, the employee received "points" for the attendance policy violations, ultimately resulting in his termination. The court rejected the employee's FMLA interference and retaliation claims, noting that "if an employee does not comply with an employer's usual and customary notice and procedural requirements, the FMLA does not give the employee the right to take leave."

It is essential for employers to educate their employees on the Company's usual notice and procedural requirements for the reporting of absences and leave time. In this case, the employer provided and reviewed their policies with their employees on several occasions. The fact the employee was notified and reminded of the requirements of the notification policies was very persuasive to the court.