

## EMPLOYER SUED FOR "EXACERBATING" EMPLOYEE'S MEDICAL CONDITION



Employees often take FMLA (Family and Medical Leave Act) leave for an illness and/or any necessary surgery resulting from such illness. Others may be stressed at work from their boss' conduct towards them. But can an employee claim that his/her employer is the reason that the leave was a necessity? James Breneisen began working at Motorola in 1994. In January of 2001, he took FMLA leave and was treated for gastroesophageal reflux, or acid reflux disease. He returned to work approximately three months later and was delegated to a new position. His employer asserted that his previous job had been eliminated and his duties dispersed among other employees. Breneisen's pay and benefits did not change, but he believed that the reassignment was a demotion. In April of 2001, he took medical leave again for esophageal surgery. He was back at work in September, but took leave a third time in February of 2002 for a total esophagectomy, a surgery in which the esophagus is removed. He did not return to work following the February leave, and Motorola terminated his job in June of 2003. Breneisen and other previous employees filed suit, claiming that their supervisors at the Motorola Service Center in Illinois violated the FMLA by penalizing them for taking medical leave. They alleged that employer retaliation and discrimination resulted in the workers being demoted, not receiving raises, being questioned upon return from medical leave, and receiving negative performance evaluations. A district court granted summary judgment in favor of Motorola, but the U.S. Court of Appeals, Seventh Circuit, reversed the decision for Breneisen and one other employee. The case was argued again in May of 2011. Breneisen's point of focus was allegations of a "hostile work environment" following his leave for esophageal surgery, from September of 2001 to February of 2002. He was working in the Contracts Department, and he claims that the department manager's adverse treatment caused him severe stress and high blood pressure, while the surgeries relating to his acid reflux were a direct result. Interestingly, Breneisen was not alleging wrongful termination. His argument was that the alleged harassment from his department manager "exacerbated" his medical condition, preventing him from being able to work. He was seeking back and front pay, and recovery from his loss of employment benefits as well as his medical bills. The court found no relevance in Breneisen's claim of harassment aggravating his condition, as it occurred during an "unprotected leave." He was not alleging that any such mistreatment took place following his initial FMLA leave. However, the FMLA only allows twelve weeks of leave per year, the entirety of which Breneisen had used for his medical leave in January of 2001. As such, the court stated that his return from the second leave was not due to the FMLA but rather a "courtesy" from the employer. Since the alleged harassment happened beyond FMLA's protection, the court found no grounds for an FMLA violation. The court affirmed the original dismissal of Breneisen's FMLA claims.