

## WOMAN AT TELEPHONE COMPANY ALLEGES RETALIATION FOR FMLA LEAVE



A woman working in customer service at Southwestern Bell Telephone Company was terminated. She filed a lawsuit, claiming that she was fired for taking FMLA (Family and Medical Leave Act) leave. The courts had a different opinion. The woman had been employed at the company for seven years, working in sales and handling customer complaints. While employed, she took approved, intermittent FMLA leave, a fact which Southwestern Bell did not dispute. She alleges, however, that she was mocked by her manager for taking leave and called an "FMLA queen." She further claims that the manager denied her a pin number necessary to apply for a higher level job but informed her that, if she worked for three months without an FMLA leave, she could have the job. In October of 2007, the woman took a call from an irate customer. The employee attempted to transfer the call, as per her training, but the customer was further angered at the prospect of being placed on hold again. It was at this point that the employee's tone apparently "became sarcastic," and the two argued. The customer finally demanded to speak with a supervisor, after which the employee stated loudly, while transferring the call and with the customer still on the line, "She's crazy." The employee then threw down her headset. The woman was later suspended without pay and, following a hearing, was terminated in December. She filed a grievance, and was offered by the associate director of human resources a "Last Chance Agreement," which stipulated that she would keep her job without back pay but might be terminated for any infraction during a 36-month probationary period. The woman declined the offer and appealed the decision to the lead labor relations manager. The company states that the employee was subsequently offered a reduced probationary period of 18 months, but she again refused. The employee disputes this, claiming that she was never offered any less than 24 months.



The woman filed suit in a district court claiming retaliation for her FMLA leave. The court granted a motion of summary judgment in the company's favor, stating that the woman "had failed to rebut [the company's] legitimate, non-retaliatory reason for her termination." In other words, she never disputed the October incident that the company claims was the reason that she was fired. She appealed the decision. The U.S. Court of Appeals, Fifth Circuit, believed that, since the company did not dispute the FMLA leave and its stated reason for termination was not disputed by the plaintiff, the burden of proof would lie with the employee. The woman cited two other employees, one whom she alleges fell asleep and the other who allegedly "over-talked a customer," but she failed to establish that the other workers were in circumstances similar to her own. She further noted an email from the attendance and administrative manager asking employees to report those who abused FMLA leave and the "FMLA queen" remark, but there was no evidence that either manager had influence or was involved in the woman's termination. As the plaintiff was unable to prove a pretext for FMLA retaliation, the appeals court affirmed the district court's decision.