

VERDICT LAYS BARE EMPLOYEE FMLA CAMOUFLAGE



A federal appellate court has dismissed a lawsuit brought by a worker, Shaneika Smith, who, in her lawsuit had claimed that her workers sacked her in retaliation for taking intermittent FMLA leave. The 5th Circuit Court of Appeals ruled that her firing was justifiable and was on the grounds that she treated a customer badly. The court's dismissal is means that employees cannot manipulate and misuse FMLA to evade valid disciplining. The Family and Medical Leave Act, FMLA, entitles employees to take unpaid, job-protected leave for specified family and medical reasons. Shaneika Smith worked for the Southwestern Bell Telephone Co. as a customer service representative and her duties were to attend to customer calls and address their complaints. As required by her job responsibilities, she was given specific orientation on how to handle and manage belligerent customers. She was told that all times, she was to maintain a calm composure and never to lose her cool. She was always to speak in a civil tone and if the situation seemed to get out of her control, she was to transfer the caller to a designated representative or sales coach manager. Smith took, standard, intermittent FMLA leave, for a health condition, that she did not reveal. She said that her manager, Michael Thomson did not approve of her taking such leaves. She said that he mocked her for taking FMLA leave and labeled her an "FMLA queen." She also alleged that he declined to give her the code necessary to apply for a promotion, further alleging, that Thomson said, she would be given the code, provided she came to work for 3 months without taking FMLA leave. In October 2007, Smith received a call from an irate customer, whose phone service had been disconnected. When no amount of normal customer service talk failed to calm the customer, Smith's tone, it is alleged, also became acerbic. The increasingly more agitated customer threatened Smith that she would ensure that she lost her job, to which Smith retorted, "You need to watch your mouth speaking to me." To add insult to injury, Smith offhandedly remarked, "She's crazy"—while the customer was still on the line. She is also reported to have thrown down her handset, after the conversation was over. The company, following an investigation, found her in the wrong and decided to relinquish her from her services, effective December 11, 2007. Smith filed a formal grievance challenging the company's decision. The company offered to take her back, but subject to termination for any breach, within a three year probationary period. She declined to accept the offer, whereupon the company, Southwestern Bell, agreed to cut her probationary period by half and reduce it to 18 months. Even this was not good enough for her. She filed a lawsuit, that she had been fired in retaliation for taking protected FMLA leave. When the judgment came in the company's favor, she appealed the decision to the 5th Circuit Court of Appeals. The 5th Circuit noted that the FMLA "protects employees from retaliation or discrimination for exercising their rights under the FMLA" and that Smith had failed to prove that her employers stated reason of firing her for mishandling a customer call, was only an excuse for retaliation. The 5th Circuit said that it agreed with the trial judge, that her termination was lawful and unbiased. The court found that Smith's allegations were not backed by proof and rejected them saying, "[We] have repeatedly held that self-serving statements, without more, will not defeat a motion for summary judgment, particularly one supported by plentiful contrary evidence." Scott Brutocao, a shareholder in the firm's Austin office, said that in spite of knowing that Smith was in the wrong, the company made a generous conciliatory offer of re-employing her. This clearly worked in the company's favor. "The court used that gesture to show that the employer harbored no animosity against the employee, and in so doing affirmed the dismissal of the case," he said.