

FIRED FOR TAKING LEAVE, OR WAS IT A CLEAR CASE OF INSUBORDINATION?



Was an employee of the University of Utah fired for insubordination, or because he had exercised his FMLA (Family and Medical Leave Act) rights? That's a question that a district court and appellate judges had to answer. The man was hired in 2003 and eventually worked as a program manager for emergency preparedness, his responsibilities including managing grants from the Department of Homeland Security. In 2006, his supervisor asked the university's internal audit department to review administrative practices regarding grants, and an ensuing report noted possible mistakes on individual grants. He was asked to generate a draft in response to the audit, but three weeks later, he'd only responded in part with a spreadsheet. He assured his supervisor that he could complete a draft memorandum within several days. Less than a week later, the supervisor informed the HR department that a reduction-in-force would effectively eliminate the man's position within a month due to a drop in grant money. The man later requested FMLA leave, citing childcare needs. His supervisor was reportedly "annoyed" and expressed that the audit was more important. The supervisor also allegedly "went ballistic" when FMLA was sanctioned without her approval. Meanwhile, the HR rep to whom the man had spoken regarding his leave claimed that he said he would be working at home to "clear his name" and mentioned a possible job offer from another employer. While the man was on leave, the supervisor stopped by his office for files to complete the response to the audit. Drawers were empty, files were deleted and there were no documents relating to the audit. The supervisor left the man a voicemail and discontinued his work cell phone and his university email address. At a subsequent meeting, the man submitted a required report and claimed that he would bring the spreadsheet the following day. He was informed of the reduction-in-force and allegedly "changed his mind" about the spreadsheet – not wanting to work during his leave. The next day, he took the previously submitted report home with him.



The supervisor called the man, requesting the report and electronic and hardcopies of the spreadsheet. He was on campus days later but did not bring any of the items. However, after the supervisor threatened to notify the police, the man turned in his laptop – wiped clean, with only the spreadsheet and the operating system. The spreadsheet couldn't be opened because the program to create it had been deleted along with everything else. The supervisor responded by terminating the man's position and implementing a fire-year hiring ban. He appealed to the university, which upheld the decision. A district court agreed, dismissing claims in his resultant suit: violation of FMLA, breach of contract, violation of whistleblower rights and deprivation of liberty and property without due process. The man took his case to an appeals court – his FMLA claims only – but the ruling was affirmed. Neither court believed that the man had been fired because he was on leave but simply while he was on leave. This was supported by evidence of his insubordination and the fact that the reduction-in-force process had been initiated well before he'd requested FMLA leave. Want to see which HR Representative jobs are available near you? [Click here](#) to see