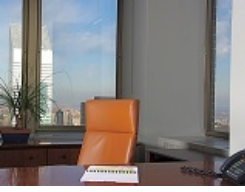


## WAS EMPLOYEE FIRED BECAUSE OF HER FMLA REQUEST?



Employers may want to think twice before firing an employee during a FMLA (Family and Medical Leave Act) leave. A sheriff's office in Florida lost such a case when a worker filed a lawsuit against her former employers. The employee in question had called in sick for two days due to an infection. After returning to work, she informed her supervisor of her medical condition and stated that she would need time off for regular treatments. She submitted an FMLA leave request on a Friday. The subsequent Monday, her employment was terminated, allegedly based on her poor work performance. She filed a complaint with the Department of Labor (DOL) and then filed a lawsuit against the sheriff's office in a federal court. A jury heard her case and, given "conflicting accounts" of her performance at work, found that she had provided sufficient notice of her need for medical leave. The jury ruled that the sheriff's office had violated the FMLA and awarded the woman back pay, prejudgment interest (interest accrued from the time of damage to the judgment entered in court), liquidated damages, five years of front pay, and her attorneys' fees. The sheriff's office appealed the decision. One of its contentions was that, due to FMLA regulations, the employee could not have filed suit after initially filing a DOL complaint. According to Section 29 U.S.C. § 2617 of the Family Medical and Leave Act: (a) The employee has the choice of: (1) Filing, or having another person file on his or her behalf, a complaint with the Secretary of Labor, or (2) Filing a private lawsuit pursuant to section 107 of FMLA. The U.S. Court of Appeals, Eleventh Circuit argued that "where the statute provides a right to a cause of action and lists the limitations, regulations cannot contravene the statute by terminating the right where the statute did not so authorize." In other words, as the FMLA regulation cannot "authorize" a right to sue, it likewise cannot prevent a person from suing. The employer's appeal also declared a belief that the jury was not properly instructed on the law regarding the employee's claim. The woman, however, had sued for FMLA interference, not employer retaliation. The appeals court cited three separate cases to show that "a casual nexus is not an element of an interference claim." In order to prove FMLA interference, an employee need only prove that he/she was denied benefits protected by the FMLA. Linking the employment termination with an unlawful reason (in this case, the medical leave) is the "increased burden that a retaliation plaintiff faces that an interference plaintiff does not." The employer was still permitted to state its reasons for terminating the employee's job as "an affirmative defense." The U.S. Court of Appeals affirmed the original decision on all claims.

<https://blog.granted.com/>