

COURT RULES AGAINST EMPLOYEE'S CLAIMS OF RETALIATION



An abundance of lawsuits are filed every year, each from a former employee alleging employer retaliation for terminating a position during or immediately following FMLA leave (Family and Medical Leave Act). The person making the allegation must prove causality, but if the employer had good reason for firing the employee, chances are the suit won't go anywhere. A woman working as a Registered Hospice Nurse for a home care and hospice facility recently made a claim of retaliation. From her employment in 2002 to 2008, she took four medical leaves. In 2009, she went on her fifth medical leave and, upon her return, was asked to meet with managers of the facility. At this meeting, the RN was accused of misconduct. Though she denied the allegations against her, the employee was terminated. The allegation had come from a patient, who claimed that the employee had shown to him and his wife photographs of her boyfriend's genitals on her cell phone. He stated that he did not wish to see the nurse again, as she attended to the man at his home. However, by the time the patient had informed another nurse of the incident, the employee was on FMLA leave. Meanwhile, the facility recorded the complaint and also verified the account with the patient's wife. The nurse's medical leave lasted for two additional months, during which time no one at the facility contacted her, as per company policy. The employee later claimed that a policy of not corresponding with employees on leave does not exist. Following her termination, the woman filed suit with a district court, claiming an FMLA violation. The court granted summary judgment in favor of the facility, believing that its given reasons for terminating the employee were not "pretextual" – that the facility was not, in fact, veiling its true motivation. At an appeals court, the woman cited Federal Rule of Civil Procedure 26(a)(1), which requires the disclosure – names and addresses, etc. – of persons likely to have "discoverable information." The facility did not provide any such information of the patient who made the initial allegations. The court disregarded this argument, as the woman knew the patient's identity. Furthermore, the court was more concerned with the allegation, believing that the facility not supplying the patient's information did not prejudice the employee. The woman also disputed the company policy of not contacting employees on leave and the meeting at which she was fired. The court was inclined to agree that no policy existed, as the facility did not offer evidence, but other employees testified that they had not communicated with anyone during a medical leave. The meeting was a source of contention. The employee states that she vehemently denied the allegations, while the managers say she was largely silent. However, she did not deny the allegations in court and also admitted to showing similar cell phone pictures to a secretary. The U.S. Court of Appeals agreed with the initial ruling and affirmed the district court's decision.