

## POSTAL WORKER APPROVED FOR FMLA LEAVE, BUT FIRED FOR ABSENCES UNRELATED TO FMLA



A USPS employee in Ohio was approved for intermittent FMLA (Family and Medical Leave Act) leave but was fired for excessive absences because, while some absences were FMLA approved, others were not. This resulted in a lawsuit, followed by a bench trial and an appeal. The man worked as a Transportation Networks Specialist. USPS approved his FMLA leave for gout in May 2006. His certification noted that he might miss one to five days of work on a weekly basis due to his condition. The man had a history of unscheduled absences, both before and after his approval for FMLA. Gout pain was sometimes the reason for tardiness or missing an entire day, but numerous absences were unrelated. For a period of two years, the man was often disciplined for his unscheduled absences. Some of the disciplinary actions were due to his failure to comply with USPS procedure. A telephone system was used for reporting unscheduled absences, and an FMLA case number was required. Many times, the man didn't provide his case number, nor did he include the number on a corresponding leave slip. An FMLA packet was sent to employees who didn't give their number over the phone. The man received numerous such packets but never responded to any of them. Nevertheless, a number of the worker's absences were not FMLA approved. He was given a letter of warning in February 2008. By October, USPS issued a notice of proposed removal due to 16 unscheduled absences within a 13-week period. A decision was rendered in December, and the man was terminated, effective the following month. The man's suit alleged interference of his FMLA rights, retaliation for exercising his FMLA rights, a violation of Ohio public policy and a violation of wage and labor laws. The district court dismissed the latter two claims, but found merit in the plaintiff's FMLA claims and allowed the case to proceed to a bench trial. The jury ruled in favor of USPS, finding that the man would have been fired regardless of his FMLA approval. The district court adopted the jury's decision and granted summary judgment for USPS. On appeal, the plaintiff argued that he'd received FMLA certification for 20 of his absences referenced in the letter of warning from 2008. He further asserted that his absences in 2005, when he had no FMLA leave, were later approved as FMLA leave for a family member. But the district court and the jury had both found that, regardless of his FMLA-approved absences, the man had violated internal procedures by not providing his FMLA case number or properly handling unscheduled absences. There was also the matter of absences unrelated to FMLA, a point that the man didn't even dispute. He also acknowledged that some of the 2005 absences were unrelated to the FMLA certification for a family member. In short, the FMLA absences were not the issue. The employee had missed work or called in late numerous times without FMLA approval and had violated USPS policy, which provided the company with a legitimate reason for discharge. The ruling in favor of USPS was affirmed by the appeals court.