

## Employee can sue employer for interfering with FMLA leave

A Pennsylvania district court ruled that a diabetic employee can sue his former employer for interfering with his right to take intermittent leave for his serious medical condition and for unlawfully retaliating against him in violation of the Family and Medical Leave Act (FMLA). While Pennsylvania and Colorado are ruled by different circuit courts, this case illustrates what can happen when an employer ignores FMLA regulations.

### Background

The FMLA allows employees with a serious health condition to take multiple periods of intermittent leave, each lasting from one hour to several weeks, due to a single illness. The FMLA prohibits employers from interfering with, restraining, or denying the exercise of any rights provided under the FMLA.

### The Case

Joel Sabbrese worked for Lowe's Home Centers since 1994. In 2001, Sabbrese was diagnosed with diabetes. Sabbrese alerted Lowe's management about his condition and Lowe's accommodated his need to eat on a scheduled basis to control his blood sugar level.

On November 8, 2001, Sabbrese began to feel light-headed and nauseous. He believed that he would pass out if he did not eat soon. He tried unsuccessfully to locate both a co-worker who was late in returning from lunch and the department manager to inform them that he needed to leave for lunch. Sabbrese asked an employee from another department to watch his department so that he could go to lunch.

When Sabbrese returned from lunch, his supervisor called him to a meeting room and gave him a verbal warning for leaving his department unattended. After the meeting, Sabbrese alleges that the supervisor blocked the

exit to the room in a threatening way. Sabbrese claims that he was startled by the supervisor's action and moved his hands forward and incidentally contacted the supervisor's chest. Lowe's claims that Sabbrese pushed the supervisor away. At Lowe's, an employee can be dismissed immediately for physically abusing another employee.

The following day, Sabbrese complained to the store manager about the disciplinary meeting. He said that he was being discriminated against because of his illness. The store manager assured Sabbrese that no further action would be taken. The store manager, however, contacted the district manager and the human resource manager regarding the incident between Sabbrese and his supervisor. Consequently, Sabbrese was terminated on November 21 for physically abusing another employee.

Sabbrese sued Lowe's in district court claiming that Lowe's had retaliated against him for taking intermittent FMLA leave for a medically necessary reason. Lowe's moved to dismiss the case, claiming it had a legitimate, non-discriminatory reason for terminating Sabbrese.

The court ruled that Sabbrese qualified for intermittent FMLA leave and that he had submitted sufficient evidence to allow a jury to reasonably conclude that the employer's reason for terminating him was a pretext. The case has been sent to trial by a jury.

### What Does This Mean for Counties?

Counties must accommodate persons with serious chronic illnesses, such as diabetes, by allowing them to take intermittent leave when medically necessary.

For more information, contact CTSI at 303-861-0507.

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