

## Temporary Illness or Disability and Leave Excuses

A recent case provides cautions for both employees and supervisors on health issues. First, a truck driver was written up twice for attendance issues by a county supervisor in Kansas. Despite the warnings, he failed to go to the doctor to get excuses and medical diagnoses of his ongoing problems. Was it worth the money he saved by not going to the doctor? Probably not—he ended up being suspended for unexcused absences.

A year later, he got sick and had to have open heart surgery. He required more than the 12 weeks of FMLA to recover. They terminated him at the end of the FMLA. After he filed a grievance, and there was a review by a grievance committee, he was reinstated under the condition that if he took too much unpaid leave again he would not be given the same consideration. A complication from his surgery arose and he again exceeded his FMLA leave of 12 weeks. This time, he was terminated and sued under the ADA.

The court determined that as serious as his condition was, it was not a permanent disability under the ADA at the time of the relevant facts. He had only been restricted from driving a truck for 8 months. Unfortunately this was too long for FMLA and too short for ADA protection. In addition, just being restricted from a single set of job duties, driving a truck, did not qualify him from being disabled from the major life activity of working. That requires evidence that he is disabled from doing any work for which he is qualified by vocational training, the geographical area to which he had access, or the number and type of jobs available from which he was medically disqualified.

### What This Means For Counties

Be careful to ask and get the answers to the right questions. Temporary illnesses should be medically monitored so an employee knows what they are dealing with in the future. Taking a casual attitude toward repeated illness may not be in anyone's best interest. A temporary restriction from a single set of job duties, such as driving a truck, does not protect an employee or qualify him from being disabled from the major life activity of working. That requires evidence that the employee is disabled from doing any work for which he is qualified by vocational training or skills, the geographical area to which he has job access, and the number and type of jobs which are readily available and from which an employee is medically disqualified. If temporary disabilities are a problem for the county, consider encouraging enrollment in a good short or long term disability plan to bridge the gap.

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