

Airline Employee's Fraudulent FMLA Request Ensures His Claim Never Gets Off The Ground

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If I had to guess, there is probably no statute that brings more frustration or gives employers more fits than the Family and Medical Leave Act (FMLA) – with intermittent leave occupying a special pedestal in this pantheon of exasperation. What to do about the employee who seems to always need FMLA right before or after a planned vacation or a three-day weekend? Admittedly, sometimes there's nothing that can be done. However, in a recent [Fourth Circuit opinion](#), the court saw through Plaintiff's request for FMLA leave for his one scheduled shift during his 20-day globetrotting vacation, upholding his discharge for FMLA abuse. The plaintiff, an airline worker, was diagnosed with anxiety disorder in 2009 and was approved for intermittent FMLA leave to deal with panic attacks. He and his wife scheduled a trip to South Africa from March 16-April 4, 2014. The only shift Plaintiff was unable to take off or switch with a co-worker landed on March 30. At approximately 1 a.m. on March 30, Plaintiff called in stating he needed to take FMLA leave for the day. The next day, Plaintiff and his wife flew to Milan, Italy, where Plaintiff's niece lived. Unsurprisingly, the airline did not fail to notice this remarkable coincidence (nor that the employee had taken leave the year before under similar circumstances) and investigated. When interviewed, Plaintiff first stated he was not actually scheduled to work that day, then stated he didn't remember calling in sick, then stated he had actually tried to return home but could not find an available flight for various reasons, which caused a panic attack. The airline notified Plaintiff of its intention to discharge him for fraudulently taking FMLA leave and making dishonest representations during the investigation. Plaintiff retired and sued the airline under the FMLA. The court wasn't buying it: This whole story runs into multiple problems. The undisputed evidence depicts an employee departing for vacation despite being scheduled to work, and then conveniently calling in FMLA leave 12 hours after the last plane departed that would allow him to return before his scheduled shift. [Plaintiff] also waited to contact [his employer] until the middle of the night in Washington when no one was present to answer the phone and ask for details about his FMLA claim.

At bottom, Plaintiff had no proof of his own shifting stories, and could not prove the airline's legitimate reasons for threatening to terminate him were pretext for FMLA discrimination. In fact, the court called it "perfectly logical for [the employer] to conclude that [Plaintiff] did not want to interrupt his Cape Town vacation to come back for one day of work." Also supporting the airline was the fact that – unlike Plaintiff's – the "company's explanation for its action has remained a consistent one." Thus, while the FMLA serves an honorable and worthy purpose of allowing employees to take leave for various medical and family issues, it must be honestly invoked for those legitimate purposes.

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