

Sick Leave Flexible For Serious Health Conditions

Question:

I had to miss a little more than three months of work to receive treatment and recover from cancer. While supportive at first, my boss is growing impatient. He keeps reminding me that I'm falling behind on my quotas because of the days I missed work and says I can't take off any more days, even for follow-up treatments. Really?

Answer:

Some employers, frustrated with seeing an empty desk in the office for too long, try to draw the line on sick leave. Whether they like it or not, in cases involving serious health conditions such as cancer, federal laws require that line to bend.

It sounds as though you have used up the Family and Medical Leave Act's 12 weeks of required unpaid leave for eligible employees who are suffering from a serious health condition that prevents them from working. Maybe you used up your paid leave before going on unpaid leave, too. This, however, does not mean you've reached the end of the road.

Cancer is a serious health condition covered by both FMLA and the Americans with Disabilities Act. Even if you exhaust your FMLA benefits, you could also qualify for reasonable accommodations under the ADA. So long as your continued absence from work does not cause an undue burden on your employer, additional unpaid leave could be considered as a reasonable accommodation required by the ADA.

Depending on your physical and mental abilities during the follow-up treatment process, an employer could determine a modified or part-time schedule is a reasonable accommodation, as opposed to additional unpaid leave, according to Equal Employment Opportunity Commission (EEOC) guidance.

Additionally, don't let your boss' threats about missed quotas get to you. Just as employers have to make work accommodations for employees with ADA-covered disabilities, they likewise must adjust their performance expectations to reflect employees' use of such accommodations. An employer could commit unlawful retaliation by punishing an employee who failed to satisfy pre-accommodation work expectations.

Not all serious health conditions overlap the FMLA and ADA. While an employee with a broken arm or similar injuries could receive up to 12 weeks of unpaid leave under FMLA, such a serious health condition that impairs or limits the worker's ability to perform major life functions does not always qualify as a disability under ADA.

People whose employers have denied them unpaid leave so they can get treatment for or recover from a serious health condition or who are subjected to retaliation for using such leave or accommodation should contact an employment law attorney.

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