

7th Circuit: Ignoring Employer's Telephone Calls Can Defeat FMLA Claim

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When an employee left work and did not return for nine days, his failure to respond to his employer's telephone calls doomed his Family and Medical Leave Act (FMLA) claim, according to the 7th U.S. Circuit Court of Appeals.

SMC Corp. in Aurora, Ill., employed Robert Righi as a sales representative. While attending a mandatory training seminar in Indianapolis, Righi learned that his elderly mother had gone into a diabetic coma. Upon learning of his mother's condition, Righi promptly left the seminar and embarked on a four-hour drive to his home in Illinois to assess his mother's situation.

The day that Righi left the seminar he did not contact his supervisor, Louis King, to request leave or inform him of his situation. King placed several calls to Righi's company-issued cell phone that day in an effort to discuss business matters. Righi did not answer King's calls. The day after Righi left the seminar, he e-mailed King to explain that he needed "the next couple days off" to make arrangements for his mother's care. In that same e-mail, Righi also remarked that he had vacation time available or "could apply for the family care act, which I do not want to do at this time."

King then proceeded to call Righi 13 more times over a period of more than a week to clarify Righi's request for time off from work. However, Righi did not return these calls or otherwise contact King.

After nine days of silence, Righi finally called King. Righi was told to come to the office the next day for a meeting. At that meeting, SMC fired Righi for violating the company's leave policy. Righi then sued SMC and King alleging violations of the FMLA.

The trial court ruled in favor of SMC and King for two reasons. First, the court found that Righi's e-mail demonstrated that he desired not to use FMLA leave. Second, Righi failed to notify the company as to his approximate return-to-work date. This was required of him by company policy and under the FMLA. Additionally, Righi ignored King's repeated telephone calls seeking more information about his request for time off from work, the trial court found.

On appeal, the 7th Circuit framed the issue as whether Righi provided SMC with sufficient notice to receive FMLA protection. In this light, the 7th Circuit affirmed the trial court's ruling, but only with regard to the trial court's second stated reason for denying this claim.

Righi's e-mail allowed an inference that he was leaving at least some room to change his mind and use FMLA leave, the appeals court found. However, the FMLA's regulations place the burden on the employee to notify his employer of the anticipated duration of needed time off from work "as soon as practicable," the court noted.

Following Righi's e-mail, SMC attempted to fulfill its legal obligation to inquire into this matter further, according to the appeals court. However, the 7th Circuit held that Righi's failure to respond to King's calls doomed his FMLA claim. It noted that employers are entitled not only to notice that the FMLA may apply, but also when an employee will return to work.

Since Righi's e-mail to King informed only that Righi needed "the next couple days off," Righi never gave his employer notice of his nine-day absence, which included six working days, the appeals court ruled. Accordingly, "[t]he FMLA does not authorize employees to 'keep their employers in the dark about when they will return' from leave," the court stated, citing other precedent from the 7th Circuit.

"We have [also] previously held that an employee's failure to comply with his employer's internal leave policies and procedures is a sufficient ground for termination and forecloses an FMLA claim," the 7th Circuit added.

Righi v. SMC Corp. of America, 7th Cir., No. 09-1775 (Feb. 14, 2011).

Professional Pointer: This matter provides a much needed reminder that the obligations under the FMLA are a two-way street. Employers can easily be placed on notice of a potential FMLA leave request; however, employees cannot stand by and keep employers in the dark. In addition to notifying an employer of the need for FMLA time off from work, an employee has one or two working days to inform his employer as to the estimated leave time needed. If an employee does not know how much time off from work he requires, the employee should at least communicate this problem to the employer, and estimate the likely duration of the requested leave. This course of action may have saved Righi's FMLA claim.

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