

# Employer's "Honest Suspicion" of Misuse of FMLA Leave Defeats FMLA Interference and Retaliation Claims

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It's not uncommon for employers to suspect employees of misusing paid or protected leaves of absence. It is, however, quite uncommon that such misuse can actually be proven and ultimately serve as a defense for an employer in a subsequent lawsuit. Yet that's precisely what happened in *Scruggs v. Carrier Corporation*.

In this case, the employer had set out to remedy an excessive employee absenteeism problem which had developed at one of its manufacturing plants. As part of its plan, the employer hired a private investigator to follow several employees who were suspected of abusing the company's leave policies. One of these employees was authorized to take intermittent leave under the Family and Medical Leave Act ("FMLA"), 29 U.S.C. §2601 et seq., to care for his mother in a nursing home.

Surveillance revealed that on a day that the employee was allegedly caring for his mother, he actually didn't even leave his house. The employer suspended him pending further investigation. The employee then attempted to provide some documentation from his mother's doctor and the nursing home that he was assisting his mother on the date in question, but the employer believed the documents and information provided were suspicious and inconsistent. Accordingly, the employer terminated the employee for misusing his FMLA leave.

The employee filed suit, alleging interference with FMLA leave and retaliation. The parties both filed motions for summary judgment. The district court ultimately concluded that even though there were issues of fact as to whether the employee was actually using his FMLA leave for an approved purpose, it was undisputed that the employer had an "honest suspicion" that the employee was misusing his leave. The Court looked to the case of *Crouch v. Whirlpool Corp.* (7th Cir. 2006) 447 F.3d 984, 986 ("[E]ven an employer's honest suspicion that the employee was not using his medical leave for its intended purpose is enough to defeat the employee's substantive rights FMLA claim.") in finding in favor of the employer.

The employee appealed. The United States Court of Appeals for the Seventh Circuit held that although there was a question of fact as to whether the employee actually used his FMLA leave for an approved purpose, the

employer had an “honest suspicion” that the employee had misused his FMLA, thus defeating the employee’s claims of FMLA interference and retaliation.

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