

# **Employee Fails to Demonstrate that Termination was act of Discrimination or Interference with Leave**

1 min read

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An employee was terminated after she took approved Family and Medical Leave Act (FMLA) leave for surgery, but failed both to contact the employer after leave expired and to return to work. The employer's FMLA leave policy required employees to "properly report" their absences to their department prior to the beginning of their shift each day until the employee received formal notification that FMLA leave had been approved. Failure to provide proper notification for three consecutive workdays subjected the employee to termination. Separate and apart from the FMLA issue, the employee had also complained to her supervisor twice that an African American employee was being treated unfairly due to race. Following her termination, the employee sued, claiming retaliation in violation of 42 U.S.C. § 1981, and interference and retaliation under the FMLA. The U.S. Court of Appeals for the 10th Circuit found that the only evidence presented by the employee was, at best, that of potential pretext, not of actual retaliatory intent. Employers should have handbook provisions and posted notifications about FMLA leave so that employees are aware of their rights and responsibilities. Employers should also have policies and procedures in place for communications with employees while out on leave.

*Twigg v. Hawker Beechcraft Corp.*, No. 10-3118, (10th Cir. Oct. 13, 2011).

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## Topics

FMLA