

# Federal Court: Employer's Discouragement of FMLA Leave Constitutes Unlawful Interference

A recent court decision reminds employers that they may be liable for interference with employee rights under the Family and Medical Leave Act (FMLA) even if they do not actually deny a request for leave. The U.S. Court of Appeals for the Seventh Circuit—which oversees Wisconsin, Illinois and Indiana—held in *Zicarelli v. Dart* that threatening to discipline an employee for taking leave qualifies as FMLA interference.

Zicarelli worked for the Cook County Sheriff's Office as a correctional officer. From 2007 through early 2016, Zicarelli used between 10 and 169 hours of FMLA leave per year. Then, from July to September 2016, Zicarelli used 304 of his allowed 480 FMLA hours because of treatment for work-related post-traumatic stress disorder (PTSD). In September, Zicarelli called the FMLA benefits manager to ask for more leave to undergo a new eight-week PTSD treatment program. He alleges that the manager told him he had already taken a lot of leave and that if he took any more FMLA leave he would be disciplined, though the manager denied saying that. Zicarelli retired soon after the call, claiming that he feared being fired.

Shortly after his retirement, Zicarelli sued the Sheriff's Office for interference with his rights under the FMLA. The district court granted the Sheriff's Office's motion for summary judgment, ruling that mere discouragement of taking leave did not violate the FMLA. But the Seventh Circuit reversed, holding that a manager's threat of discipline for taking leave would be unlawful interference with FMLA rights even if the leave were not actually denied.

According to the Seventh Circuit, Congress designed the FMLA to guarantee medical leave in a way that accommodates legitimate interests of employers but does not impede an employee's access to FMLA benefits. The court explained that an employer will be found to unlawfully impede access when an employee suffers harm from the employer's action, and this harm can result from an actual denial of leave or discouragement of taking it.

Although the Seventh Circuit expressed skepticism of Zicarelli's account and his decision to retire, it ultimately sent the case back to the lower court to resolve the factual dispute. That court will hold a trial in which a jury will determine whether it believes Zicarelli's or the manager's version of the conversation. If the jury

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believes that the manager did threaten Zicarelli's leave benefit, the Sheriff's Office may be liable for FMLA interference.

*Zicarelli v. Dart* demonstrates the importance of employers communicating carefully with their employees about FMLA requests. Employers must train managers, supervisors and anyone else who has a role in the FMLA process to prevent interference with an employee's right to seek time off under the statute. Additionally, employers should review their FMLA policies to ensure they do not use language that might be viewed as discouragement of protected leave.

If you have any questions about *Zicarelli v. Dart* or the FMLA, please contact [Robert Driscoll](#), [Katie Triska](#) or your Reinhart attorney.

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