

# LEGAL UPDATE

## 7<sup>th</sup> Circuit: Interference Without Denial of Leave Violates FMLA

The 7<sup>th</sup> Circuit Court of Appeals has ruled in [Zicarelli v. Dart](#) that an employer can violate the federal Family and Medical Leave Act (FMLA) by discouraging an employee from exercising FMLA rights without denying an FMLA leave request. The 7<sup>th</sup> Circuit's jurisdiction covers Illinois, Indiana and Wisconsin.

### Statutory Language of the FMLA

The [FMLA](#) provides that an employer may not “interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under” the act.

### ***Zicarelli v. Dart***

Cook County Sheriff's Office employee Salvatore Zicarelli claimed that when he called the office's FMLA manager to discuss using his remaining FMLA leave for post-traumatic stress disorder treatment, he was told that he had already taken “serious amounts” of FMLA and would be disciplined if he took any more. He resigned shortly after and sued, alleging an FMLA violation.

In allowing the case to go forward, the 7<sup>th</sup> Circuit acknowledged that its opinions have used “varying language that has led to some confusion” on the issue of FMLA interference. However, the court held that the statutory text “makes clear that a violation does not require actual denial of FMLA benefits. This understanding of the statute does not conflict with the relevant case law in this or other circuits.” In its reasoning, the court noted the use of the “disjunctive ‘or’” in the statutory language and FMLA regulations stating that discouraging FMLA use would be interference under the act.

### Steps for Employers

Employers covered by the FMLA should avoid appearing to discourage employees from using their FMLA leave.

### Highlights

- A Cook County Sheriff's Office employee sued the office for violating the FMLA.
- The employee alleged the office FMLA manager told him he would be disciplined if he used his remaining FMLA leave.
- The 7<sup>th</sup> Circuit Court of Appeals held that discouraging the use of FMLA even without denying FMLA leave is a violation of the statute.

***The court held that discouraging FMLA use constitutes unlawful interference with the employee's exercise of FMLA rights.***



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