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Nancy Cox worked for True North Energy, LLC, on two separate occasions, initially from September 3, 2001 until May 8, 2006 and then again from June 30, 2006 until November 2006. True North operates approximately 100 gas stations and convenience stores throughout Ohio. During her first term of service with True North, Cox managed a gas station in Lorain County, Ohio for approximately five years. Cox left True North after the company terminated her employment. Apparently, store managers were in short supply because True North later rehired Cox to manage another gas station. Two and a half months into her second managing position, Cox was diagnosed with cancer. More specifically, her doctor found a malignant neoplasm in her kidney.

On September 22, 2006, Cox requested Family and Medical Leave Act leave so that she could undergo emergency treatment for her cancer. She provided to True North a medical certification supporting her need for leave from her urologist. Three days later, True North denied her request for leave without explanation. It is unclear if this was done in writing or verbally by True North. Four days after that, Char Salmons, Manager of Operations for True North, verbally informed Cox that she could return to work after her recovery period ended. Salmons' statement implicitly indicated that Cox's leave was therefore approved. On October 2, 2006, Cox underwent surgery to treat the cancer.

On November 9, 2006, Cox telephoned several of her supervisors (including Salmons) indicating that she would be ready to return to work on November 13, 2006. Cox called Salmons and Tom Grady on the following day to affirm her return to work date. During that call, Salmons informed Cox that True North was searching for another position for Cox as the manager position was no longer available. Salmons went on to say that someone would contact Cox by November 15, 2006.

Cox's physician released her to return to work on November 13 but True North would not let her return to work despite having other open manager positions.

Cox took several steps of legal action against True North in the upcoming months including filing a complaint in the Common Pleas Court for Lorain County, Ohio, alleging FMLA violations of interference and retaliation, and that True North discharged her in violation of the public policy goals underlying the federal FMLA and the federal regulations promulgated pursuant to the FMLA, as well as other claims against True North. True North removed the complaint to federal district court and subsequently filed several motions to dismiss Cox's claims.

The main question concerning the FMLA claims was whether Cox was even an eligible employee under the FMLA. To claim the protection of the FMLA, an employee must meet the Act's requirements for eligibility: [Read the story »](#)

[Lawyer claims FMLA does not apply so client won't lose paid leave time](#)

Debra Ney worked as a clerk for the City of Hoisington's Police Department and Municipal Court. In 1998, she reported to the relevant authorities that the police chief possessed child pornography on his computer. Because of this the police chief lost his job and Kenton Doze was named the new police chief.

Ney claimed that her working conditions became extremely hostile because she had blown the whistle on the former police chief. Doze reprimanded her and did other things to make her working environment

unpleasant. In April 1999, Ney's doctors recommended that she take time off work to the tune of seven months because she had suffered an "emotional breakdown." Ney apparently had enough time in unused sick leave that she could take the time off with pay.

The City of Hoisington sent Ney a letter suggesting that she complete FMLA paperwork to determine if she qualified for FMLA leave for some of the time she would be off. Ney forwarded this paperwork to her attorney. Apparently afraid that the City was trying to renege on its obligation to pay Ney for part of her unused sick leave, Ney's attorney wrote the following letter indicating that the FMLA was not applicable:

For your information, the [FMLA] does not apply in this case. The FMLA would require the City of Hoisington to allow Ms. Ney to take up to 12 weeks of unpaid leave if she didn't have any earned sick leave and needed or wanted time off for one of the reasons allowed by the federal law. The FMLA has absolutely nothing to do with Ms. Ney's situation and the employee has to request the time off through the Act, which Ms. Ney did not do and didn't need to do. Ms. Ney is taking sick leave through her accumulated sick leave she earned as a job benefit from 16 years of service to the City of Hoisington. Ms. Ney chose to use her paid sick leave and accrued vacation and not take time off pursuant to the FMLA; therefore, the Act does not apply.

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[Bus drivers guilty of FMLA abuse or is employer guilty of mismanagement?](#)

If you've been following our daily FMLA law news updates than you've probably run across the story of the Hillsborough Area Regional Transit Authority bus drivers who were portrayed by the Tampa Bay Online website as abusing intermittent FMLA leave resulting in huge overtime costs to the City of Tampa (I assume the city is the ultimate employer).

The [first article - *HART Drivers Use Of FMLA Questioned*](#) - ran on February 8, 2008 in the Tampa Tribune. A [second article - *Loophole In Family Leave Act Is Big Enough To Park A Bus*](#) - ran 10 days later in the Tampa Tribune as well. In the second article, the reporter called for reform of the FMLA based upon the alleged abuse of FMLA leave by the bus drivers:

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Clinton Proposes Expanding Family, Medical Leave

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[United States: Department Of Labor Publishes Proposed FMLA Regulations](#)

Among the proposed FMLA regulation highlights:

Intermittent Leave: Due to the administrative burdens of providing intermittent leave (and especially unscheduled leave) under the current regulatory scheme, employers had overwhelmingly requested changes that would provide significant relief. Citing the language of

the statute, the DOL to date has declined to propose changes that would permit employers to transfer or otherwise alter the duties of employees who take unscheduled or unforeseeable intermittent leave or to increase the minimum increment of intermittent leave. The DOL has, however, left the door open by inviting further comment on both of these issues. The proposed regulations do clarify that, in keeping with the language of the statute, employees must make a “reasonable effort” (as opposed to an “attempt”) to schedule their leave so that it does not unduly disrupt an employer’s operation. In addition, the proposed regulations permit employers to require employees who take intermittent leave to comply with established call-in procedures.

Attendance Bonuses: The proposed regulations provide (contrary to the present regulations) that an employer may disqualify employees on FMLA leave from eligibility for attendance bonuses, such as “perfect attendance” awards, as long as the employer treats employees on non-FMLA leave identically.

Waiver of Rights/Claims: The proposed regulations confirm that (contrary to a Fourth Circuit decision) employees and employers may voluntarily settle disputed FMLA claims without the prior approval of a court or the DOL.

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Posters

[Family and Medical Leave Act \(FMLA\) Poster](#)

[FMLA poster in Spanish - Aviso sobre la Ley de Ausencia Familiar y Médica](#)

[FMLA Poster Insert for Military Family Leave Amendments \(PDF\)](#)

Compliance Guide to FMLA

[FMLA Basic Compliance Guide for Employers](#)

FMLA forms

[Form WH-380: An optional form that may be used to obtain a medical certification from a health care provider.](#)

[Form WH-381 An optional form that an employer may use to respond to an employee’s request for leave.](#)

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