Malingering (Abusing Sick Leave): Yes, it May Get You Fired

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A recent submission in an advice column on Boston.com struck my eye and the scenario should be no surprise to the modern worker. A Massachusetts at-will worker decides to take a “mental health day” and calls in sick, despite the fact that he is not actually sick. He then meets some of his friends at his favorite lunch spot. His manager however, spots him at lunch and fires him the next day for abusing the company’s sick leave policy. Is this termination legal?

In just about all cases, the answer is yes. The employee not only lied to his employer about being sick, but also exercised poor judgment in dining at a venue where his manager might spot him. Unless the employee can argue that the employer’s decision to terminate him was based not on his malingering, but rather on his membership in a protected class, then the employer was well within its rights to let him go – i.e. this has happened before and you always let the female employees get away with it.

Or what about the “everybody does this” excuse? Employers may not be enforcing sick days with the rigor of Principal Rooney in Ferris Bueller’s Day Off (NINE TIMES!), but the fact that some employees abuse the sick leave policy (and apparently brag about it), is no excuse. As the Boston.com columnist points-out, sick leave (whether paid or unpaid) is not a legally mandated benefit (at least in Massachusetts) and is often designed to protect other employees from getting infected from a contagious colleague. Deceiving your employer about your health status to get a day off is a display of one of the worst character traits you can possibly present to your bosses: dishonesty.

Employees who are stressed-out or just want a break should take a PTO/vacation day. If they have run out of PTO/vacation time, but absolutely need a respite, they should consider talking to their manager about a solution, including possibly taking an unpaid leave of absence. At the same time, employers who offer sick leave should clearly outline sick leave policies and the consequences for those who abuse these policies in their employee handbooks. And finally if you call in sick when you are actually healthy, do not go to the ball game and do not, under any circumstances, go to your manager’s favorite trattoria - that is, unless you really want to lose your job.

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