

# Ohio Federal Court Finds No FMLA Violation, Disability Discrimination Where Hospital Terminates Nurse with Migraine Who Slept While On Duty

JacksonLewis

Article By

[Michael R. Bertoncini](#)

[Jackson Lewis P.C.](#)

[Healthcare Workplace Update Blog](#)

- [Health Law & Managed Care](#)
- [Labor & Employment](#)
- [Litigation / Trial Practice](#)
- [Civil Rights](#)
  
- [6th Circuit \(incl. bankruptcy\)](#)

Tuesday, February 23, 2016

A federal court in Ohio has dismissed **Family and Medical Leave Act** and disability discrimination claims filed by a nurse who was caught sleeping while on duty and fired. **Lasher v. Medina Hosp., et al.**, C.A. No. 1:15CV00005 (N.D. Ohio Feb. 5, 2016). The court found the hospital had a legitimate, nondiscriminatory reason for terminating her employment, which she could not establish was pretextual, and that she failed to notify her employer that she needed FMLA leave for the time she was sleeping on duty.

Jodi Lasher worked as a registered nurse in Medina Hospital's Family Birthing Center. She suffered from chronic migraine headaches. The Hospital maintained a

no-fault attendance policy. Lasher was disciplined under that policy in February and June 2014. In the spring of 2014, the Hospital also received complaints that Lasher's coworkers sometimes were unable to find her on the unit where she worked and that she was inappropriately using the call room during her shift.

Rather than discipline Lasher because of these complaints, Lasher's supervisor and a member of the Hospital's Human Resources Department met with her to discuss accommodations for her migraines and the availability of FMLA leave. Lasher informed the Hospital that accommodations were not applicable to her situation, but that she would take intermittent FMLA leave as needed. Lasher was granted all of the FMLA leave she requested, including an occasion when she developed a migraine headache during her scheduled shift.

During a shift in September 2014, Lasher developed a migraine headache while caring for a patient who was in labor. When she experienced dizziness, Lasher went into a vacant room and collapsed onto the bed. A coworker later found her and woke her up. Lasher then went to the emergency room for treatment. The Hospital terminated Lasher's employment pursuant to a policy that classifies sleeping while on duty as a major infraction that may result in suspension or termination of employment.

Lasher filed suit alleging the Hospital violated the FMLA by retaliating against her for exercising her FMLA rights and by interfering with those rights and that it discriminated against her on the basis of a disability in violation of Ohio state law. The court granted the Hospital's motion for summary judgment, dismissing all claims.

The court agreed that sleeping while on duty constituted a legitimate, nondiscriminatory reason for terminating Lasher's employment. Applying Sixth Circuit case law, the court found that because the Hospital honestly believed Lasher was sleeping while on duty, she could not establish the stated reason for terminating her employment was pretext for unlawful conduct. The court also found Lasher failed to identify any employee who engaged in substantially identical conduct and was treated differently under the policy the Hospital relied on to discharge her. For these reasons, the court dismissed Lasher's FMLA retaliation and state law disability discrimination claims.

The court also dismissed an FMLA interference claim, because Lasher did not notify the Hospital she needed leave on the night she fell asleep while on duty. It is undisputed Lasher's manager previously had made clear that if she experienced a migraine during a shift, she must notify someone that she needs to remove herself from patient care and that she cannot just leave patients without letting someone know. Lasher did not inform anyone she was experiencing migraine symptoms when she went into the vacant room. Nor did she later inform her manager that she needed FMLA leave that night.

The Hospital's proactive approach to addressing Lasher's potential need for accommodations and FMLA leave was a key to its victory in this matter. Healthcare employers should train front line managers to work with their Human Resources colleagues to engage in the kind of interactive dialog that occurred here.

Jackson Lewis P.C. © 2020

**Source URL:** <https://www.natlawreview.com/article/ohio-federal-court-finds-no-fmla-violation-disability-discrimination-where-hospital>