

## Case Can Proceed Where Employer May Have Discouraged FMLA Use

The 7th 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 7th 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 thereafter and sued, alleging an FMLA violation.

In allowing Zicarelli's case to go forward, the 7th Circuit acknowledged that its opinions have used “varying language that has led to some confusion” on the issue of FMLA interference. The court held however, 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 as well as FMLA regulations stating that discouraging an employee from using FMLA leave would constitute interference in violation of the law.

### Steps for Employers

Employers covered by the FMLA should avoid in any way discouraging eligible employees from using their FMLA leave.