

Frederick Taylor is a five-year employee at EDSEL Automotive and a member of the United Auto Workers (“UAW”). Taylor is assigned to a “transmission line” crew on the third shift. Only low-seniority employees hold these jobs and overtime is mandatory.

The collective bargaining agreement (“CBA”) between EDSEL and the UAW contains a no-fault attendance program. Absences due to FMLA leave are not counted. All other absences, including all other health-related absences, are considered “points.” An employee is progressively disciplined as he or she accumulates points within a calendar year. Taylor knows that his next absence this year will result in a four-week suspension, with termination to follow if he is absent again before January. Taylor also has been frequently tardy during 2007 and his next lateness will result in a week’s suspension under the CBA.

Taylor suffers from Multiple Sclerosis (MS), and the disease has become progressively worse during the last year. EDSEL is aware that Taylor suffers from MS. In addition, Taylor has commented to his supervisor that he is tiring easily and having trouble managing the more strenuous aspects of his job due to his health condition.

On Friday, October 26, 2007, Taylor called EDSEL’s automated employee call-in line and left a message stating that he would be absent because he is “feeling sick again.” Taylor returned to work on Monday, October 29, but arrived 65 minutes late. He told his supervisor that he had trouble getting going that evening because he was still not feeling well. Taylor consulted with both his union and a private attorney on October 31 and learned about the availability of FMLA leave. EDSEL has a USDOL FMLA poster in the employee break-room.

On November 1 an EDSEL labor-relations representative met with Taylor and his shop steward to advise Taylor that he would be suspended for five weeks – four weeks for his last absence and one week for his latest incident of tardiness. Taylor then stated that he had been absent on October 26 due to dizziness and fatigue associated with MS. He produced an FMLA medical certification form completed by his physician and a letter from his attorney. The letter and medical certification form state:

- That Taylor needs to be periodically absent due to complications from MS;
- That he has trouble getting up for work because the MS medication he is taking disrupts his sleep and causes him to be disoriented when he awakens;
- That Taylor was late on October 29 because it took time for the dizziness from his MS medication to dissipate after he awoke, so that he could drive;
- That all but one of his absences over the past year, including his absence on October 26, have been related to MS symptoms and that most of his tardiness incidents have likewise been associated with his MS; and
- That Taylor should be given “light duty” limited to 40 hours per week.

EDSEL has light duty positions only for employees who have had on-the-job injuries.