PretiFlaherty

HRAGC
Human Resources Association
Greater Concord

HRAGC LEGAL UPDATE

OCTOBER 18, 2018

***Germanowski v. Harris*, 854 F. 3d 68 (1st Cir. 2017).**

Facts: In October 2014 Germanowski suffered a nervous breakdown while working and was out for eight days. On Monday, February 2, Harris instructed Germanowski not to come to work the next day. Germanowski e-mailed Harris on February 3 stating "that she would be out sick for the week, and that she was scheduled to see her doctor." On February 5 her psychiatrist wrote a letter recommending a leave of absence to pursue treatment but the letter was not provided to Harris or anyone at work. On February 6 Germanowski was notified her employment was terminated.

Key Holdings: The Court ruled in favor of Harris on the FMLA retaliation claim making the following key findings:

- The FMLA does not protect an employee from discharge for any reason while she is on leave; it protects her only from discharge because she requests or takes FMLA leave.
- The plaintiff must allege a plausible theory connecting the attempt to exercise FMLA rights and her termination.
- The February 3 e-mail may not have been insufficient to give notice she was asserting her FMLA rights.
- The determining factor was termination was already in the works before the February 3 e-mail.
- Harris regularly accommodated Germanowski when she felt unable to work and encouraged her to stay out longer.

***McDonald v. Town of Brookline*, 863 F. 3d 57 (1st Cir. 2017).**

Facts: McDonald was terminated in May 2009 for unjustified absences from work and failing to provide adequate documentation for his use of sick leave. He generally received positive performance reviews but after a struggle with substance abuse he began receiving complaints about his absenteeism. McDonald missed enough time over the winter that he was slated for a disciplinary hearing in March, but that was resolved. After a diagnosis of sleep apnea and a request for light duty work, McDonald was provided with his FMLA rights. He provided the Town with documentation (which was deemed insufficient), and never returned the FMLA form he was given. He did not reply to an April 21 letter warning him that he could be terminated for failing to provide specific documentation or the completed FMLA leave request form. After he was terminated he supplied the completed FMLA form and medical information. He appealed the decision and failed to provide any medical evidence at the appeal hearing.

Key Holdings: Following a six-day jury trial a verdict was entered for the Town, which was upheld on appeal.

- The Town was required to consider post-termination events including the subsequently provided FMLA leave request form and medical documentation.
- What constitutes a reasonable accommodation under the ADA depends on the specific facts of each individual case.
- The list of possible accommodations is merely illustrative; the list is not exhaustive and it is not mandatory.
- A leave of absence and leave extension are reasonable accommodations in some, but not all, circumstances.

***Echevarria v. Astrazeneca Pharmaceutical LP*, 856 F. 3d 119 (1st Cir. 2017).**

Facts: Echevarria was diagnosed with depression and anxiety and a year later was diagnosed with a brain tumor. She disclosed the tumor and biopsy procedures but did not disclose her depression or anxiety. She was approved for STD benefits after her psychiatrist recommended she take a leave of five months. In mid-May the psychiatrist estimated a leave of absence of twelve months was necessary. The employer sent a letter indicating she had not returned to work as ordered and it was presumed she had resigned with a termination effective date of July 19. There was also a reorganization that eliminated her sales position.

Key Holdings: The District Court entered summary judgment for Astrazeneca and the First Circuit affirmed finding the following:

- The plaintiff bears the burden of showing the proposed accommodation would enable her to perform the essential functions of her job and also that it is facially reasonable.
- On the facts of this case the request for a leave of absence of twelve months was not facially reasonable.
- Plaintiff also failed to show that the requested accommodation would have allowed her to return to work.
- The Court relied on decisions from other jurisdictions finding leaves of two to nine months were not reasonable.
- Where the employee does not present a reasonable accommodation the failure to engage in the interactive process does not create liability.
- Where an employer legitimately terminates an employee's position in a reorganization it is not retaliatory to thereafter terminate the employee.
- While a deviation from an employer's standard policy or practice may be evidence of discrimination or retaliation the facts of this case did not support such an inference.

***Beckman v. Wal-Mart Stores, Inc.*, No. 17-2250 (6th Cir. 2018).**

Facts: Beckman was diagnosed with a double hernia in August 2013 and he was approved for four different leaves under the FMLA over the course of fourteen months totaling ten weeks. He was also repeatedly absent from work without authorization for a total of 110 hours. He was warned he would lose his job if he had additional unauthorized absences. He then proceeded to leave work early on two days (Oct. 21 & 22) without authorization and missed two other days entirely. Beckman was then told he had violated the attendance policy. He then asked that his absences count as FMLA leave which Wal-Mart denied because he had not worked at least 1,250 hours over the past year and was thus not eligible for FMLA leave. He was terminated for excessive absences.

Key Holdings: The District Court granted summary judgment for Wal-Mart which was affirmed on appeal.

- The employee was justifiably terminated for violating the attendance policy when he left early on October 21 after being warned he could be terminated for future unauthorized absences.
- An employee who cannot meet the attendance requirements of the job at issue cannot be considered a "qualified" individual protected by the ADA.
- Thus, the failure to grant the leave from October 23 to October 30 was not a violation of the ADA because he could not meet the attendance policy due to excessive absenteeism.
- A requested accommodation is not reasonable under the ADA if it requires eliminating an essential function of the job.
- If a request for light duty accommodation eliminates an essential function of a job, it is not reasonable.
- Under the ADA an employee who wants a transfer to another job as an accommodation must ask for a transfer.

PRACTICE POINTER

- Centralize the hiring process.
- Use job descriptions.
- Train supervisors on disabilities and disability rights.
- Require regular supervisor feedback.
- Create documentation.
- Avoid rushed decisions and give employees time if necessary.
- Make concessions.
- Revisit decisions if additional information is presented.

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