You Know It When You See It: Company "On Notice" Of Employee's Need For FMLA Leave

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The Family and Medical Leave Act (FMLA) entitles an employee with a serious health condition to 12 workweeks of job-protected leave during any 12-month period. The employee may sue if the employer interferes with the employee's leave or reinstatement.

But to prevail on a claim for interference, an employee must show that the employer was given notice of the need for leave. The employee need not specifically invoke the FMLA or use the phrase "serious health condition." The employee need only advise the employer he or she needs time off work for a reason that may qualify for FMLA leave. As a healthcare provider recently learned, proceeding with a termination in the face of such notice can be costly. *Clinkscale v. St. Therese of New Hope*.

Watching A Meltdown
Ruby Clinkscale worked as a nurse at St. Therese of New Hope, a long-term care facility. On October 11, 2010, after learning she had been reassigned from the rehabilitation unit to the long-term care unit, she expressed concern to her supervisor about her lack of training for the new unit and requested training. In response, her supervisor told her she would not have a job if she did not work in the unit and threatened that she could lose her license for patient abandonment if she refused to work there.

Clinkscale immediately went to the facility's Human Resources Director and restated her concerns. While speaking with the Director, Clinkscale suffered an anxiety attack and began crying and shaking to such an extreme degree that she requested an ambulance. In response to Clinkscale's emotional distress, the HR Director directed her to go home and said they could figure things out the next day. Clinkscale made an appointment with her physician for the next morning.

Clinkscale's doctor believed that she had experienced a "situationally triggered," anxiety attack. He advised her to get therapy and prescribed two medications. He also provided her with a note to St. Therese recommending that she not work the rest of the week. Clinkscale hand delivered the note to the HR department on October 12th. In return, Human Resources gave her FMLA paperwork to complete.

Nevertheless, later that same day, Human Resources called Clinkscale and advised that she had been terminated on October 11th, for walking off the job. Two days later (October 14) Clinkscale's doctor sent to St. Therese the completed FMLA certification, which indicated Clinkscale was "suffering from anxiety and panic attacks," and indicated that she needed one week of leave because of her condition. Approximately two weeks after advising Clinkscale of her termination, St. Therese filed a complaint with the State Board of Nursing that Clinkscale had refused to work and walked out.

Clinkscale subsequently filed a lawsuit against St. Therese for interference with her FMLA rights. St. Therese moved for summary judgment arguing Clinkscale had no FMLA rights at the time she requested leave because she had been terminated before she ever requested any leave and because her termination was unrelated to her leave request. The district court granted summary judgment in favor of St. Therese, and Clinkscale appealed.

A Resignation Or A Firing?

On appeal, St. Therese argued that it was not on notice that Clinkscale needed leave when it terminated her employment because her supervisors thought that she had quit on October 11 – the day before she requested leave. U.S. Court of Appeals for the 8th Circuit rejected this argument. First, the court noted that the St. Therese's HR Director had instructed Clinkscale to leave work on October 11 after she suffered a visible anxiety attack during their meeting.

Moreover, St. Therese's witnesses all admitted that Clinkscale's supervisors and Human Resources did not discuss Clinkscale's alleged voluntary termination until early on October 12 – the same day Clinkscale brought her doctor's note indicating she needed leave to Human Resources by 9:30 and the same day Human Resources gave her FMLA forms to complete –an action that was inconsistent with any alleged belief that she had quit or had been terminated the previous day. Therefore, the court held that a jury could conclude that Clinkscale provided notice as soon as practicable and that St. Therese was on notice of Clinkscale's need for leave when it terminated her employment.

The court also rejected St. Therese's alternative argument that if Clinkscale did not quit, it terminated Clinkscale's employment for patient abandonment. The court noted that Clinkscale's panic attack, which was a symptom of her anxiety disorder, and the HR Director's instruction to leave work precipitated her departure from the facility. Based on these uncontroverted facts, the court held that St. Therese's argument that Clinkscale's termination was completely unrelated to her need for leave was not viable.

Finally, the Court rejected St. Therese's assertion that it could not have known about Clinkscale's need for leave because she previously had never suffered a panic attack at work and had not been diagnosed with anxiety disorder because the FMLA contemplated that the need for leave could arise unexpectedly.

What This Means To Employers

Clinkscale possibly expands the concept of notice under the FMLA. Specifically, the 8th Circuit seems to suggest that the HR Director had notice of Clinksdale's possible need for leave – before she ever requested it – by virtue of his observation of her emotional meltdown, i.e., symptoms of her undiagnosed serious health condition, during their meeting. Indeed, the 8th Circuit admitted that the fact that Clinkscale was not diagnosed until October 12 would ultimately bear on the jury's consideration of the notice issue.

Holding that an employer is on notice of an employee's need for leave based on the employer's observation of symptoms that may or may not be the result of a medical condition – particularly a mental condition – is an incredibly broad view of notice.

But the court most likely was cognizant of the bad facts presented that did not pass the "smell" test. Certainly the HR Director knew that he had sent Clinkscale home on October 11 so it is unclear how her supervisors could have believed that Clinkscale had quit once they spoke with Human Resources absent the HR Director's wholesale failure to communicate that information.

Assuming the decision to terminate Clinkscale's employment occurred on October 12 before she ever presented her physician's note, the second communication failure occurred when Human Resources gave her FMLA paperwork to complete without mentioning her termination. This underscores the importance of Human Resources professionals and supervisors communicating with one another.

It's not uncommon for an employee to preemptively assert FMLA rights when facing an unpleasant work situation or possible discipline. That possibility makes it imperative for employers to document meetings concerning discipline and termination decisions that cannot be communicated the same day they are made. Further, employers should be careful to proceed with a termination of employment in the face of what potentially could be notice under the FMLA.

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