



# Federal Appeals Court Decision Offers Practical Guidance To Both HR Executives And Their Employers

Insights

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A federal appeals court issued a decision on January 5, 2016 that provides valuable lessons to both human resources executives and the businesses they work for. The court upheld the termination of an HR Director after his employer found that he had committed acts of egregious misconduct. Human resources professionals will want to study this case to learn how not to get fired in the new year, and all managers will want to study this case to glean some best practices when it comes to carrying out terminations (*Miller v. Metrocare Services*, 5th Circuit Court of Appeals).

## Problems Arose Throughout HR Director's Employment

Stephen Miller began working with Metrocare Services, a public mental health agency in Dallas, Texas, in 2006. He began as Human Resources Manager and eventually worked his way up to the position of HR Director. During his tenure at the company, three events occurred which Miller later claimed to have soured his relationship with his employer.

First, in 2009, Miller took the lead in evaluating the exemption status of certain managerial employees under the Fair Labor Standards Act (FLSA). After a period of review, analysis, and consultation with other executives, Metrocare reclassified a group of employees to non-exempt status, meaning they would have to be paid overtime if they worked over 40 hours per week. For the next several years, Miller said he received several reports that these reclassified employees were being pressured not to record overtime hours, meaning they were working without being paid. Miller brought the concerns up the chain of command to the CEO, where they were eventually addressed.

Second, in 2013, Miller's department was downsized for budgetary reasons. Soon after, he requested a reasonable accommodation for dyslexia, and said that he needed to hire a data entry clerk to assist him with his duties despite the fact that the company had just been forced to fire several other workers. He also requested that one of the recently downsized HR staff be rehired in order to further assist him, but those requests were not granted.

Third, in 2013, Miller slipped a note under the Chief Executive Officer's office door alleging that the company was violating Department of Labor guidelines in the way it treated employees taking Family and Medical Leave Act (FMLA) time. He also alleged that the CFO had violated FMLA by terminating employees who were taking protected leave. Hours after delivering this letter, Metrocare fired

Miller; the reason for the termination was because of an issue that had just cropped up shortly before Miller made the FMLA allegation.

### **Complaint Leads To Investigation, Which Leads To Termination, Which Leads To Lawsuit...**

The incident that led to Miller's termination began when one of Miller's employees lodged a complaint about him to the company CFO. The CFO investigated and found that Miller inappropriately excluded himself from the annual criminal background checks that Metrocare required of all its employees in order to comply with federal and state law. In his position as HR Director, Miller was supposed to be responsible for ensuring that the background checks were done, and also oversaw the completion of a database that confirmed when each check was conducted.

The CFO's investigation revealed that Miller not only knowingly removed himself from the criminal background checklist for the years 2010, 2011, and 2012, but also uploaded false information into the database to make it appear as if the check had actually been performed.

The CFO documented his findings, consulted with the company CEO and outside counsel, and then terminated Miller's employment for falsification of company data. Miller brought a federal lawsuit alleging:

- FLSA violations, because he claimed that the company retaliated against him for making good-faith complaints about Metrocare's overtime policy, misclassification, and failure to pay overtime;
- FMLA violations, because he claimed that the company retaliated against him for raising issues of FMLA noncompliance; and
- Americans with Disabilities Act (ADA) violations, because he claimed that he was denied a reasonable accommodation and terminated because of his dyslexia.

After a period of discovery, the trial court granted Metrocare's Motion for Summary Judgment and dismissed the lawsuit. Miller appealed to the 5th Circuit Court of Appeals, which oversees federal cases arising out of Texas, Louisiana, and Mississippi.

On January 5, 2016, the appeals court affirmed the dismissal and ruled for the employer. The court's opinion on the matter was short and sweet. It concluded that Metrocare articulated a legitimate, nondiscriminatory reason for the termination (Miller exempting himself from the background checks and falsifying records), that Miller failed to prove that this explanation was dishonest ("pretext"), and that there was no credible evidence to support any of his claims for relief.

The court also said that a reasonable accommodation wasn't warranted because the tasks that Miller wanted to push off to a data entry clerk were "important components" of his position. The ADA does not require an employer to relieve an employee of any essential job duties, especially if the proposed solution is hiring someone else to do them.

## Advice To HR Professionals: Don't Lie

The decision offers practical tips for human resources professionals and businesses alike. The advice to human resources professionals could not be simpler: don't lie. In this case, the company concluded that Miller lied when he purposefully excluded himself from the criminal background check process, and then tried to cover up the wrongdoing by uploading untrue information into the company database to falsely indicate that the checks had been conducted.

If this lesson didn't sink in when you were in kindergarten, it probably won't do any good now, but this case is another reminder that lying usually will come back to haunt you.

## Advice To Businesses: Be Smart About Terminations

The advice to all business owners, managers, in-house attorneys, and HR professionals is also fairly simple: make sure you carry out a smart termination to avoid legal liability down the road. Metrocare did a lot of things right when it terminated Miller's employment, three of which were cited by the court in its ruling for the employer:

- The CFO conducted **a thorough investigation** before terminating Miller. He didn't simply act on the sole complaint he received from the suspicious employee, but took the time to look into the situation, dig up necessary information, and come to a reasoned conclusion before deciding to terminate.
- The company's investigation was **well-documented**. The CFO completed an internal memorandum summarizing his findings and laying out his rationale before moving forward with the termination. He also gathered the information from the database that proved the misconduct occurred.
- The company's decision was **prompt**. It is often critical to proceed with discipline shortly after misconduct is discovered. The more time that passes between discovering wrongdoing and taking disciplinary action reduces the chance that a court will find that the two are linked. Delaying action also provides a window of time for a worker to take some intervening action (filing a workers' compensation claim, lodging a sexual harassment complaint, requesting FMLA time, etc.) that might complicate matters. Therefore, a timely termination is often critical to success in subsequent litigation.

It's also worth noting that the company CFO consulted with labor and employment counsel before pulling the trigger and carrying out the termination. It's always a good idea to run critical disciplinary decisions past counsel before taking action, because a second set of eyes could prove invaluable. Your attorney might not be able to prevent you from getting hit with a lawsuit (because disgruntled workers can sue you at any time and for any reason), but experienced employment counsel just might be able to minimize the likelihood that such a lawsuit is filed while also maximizing the chances of litigation success in one happens to land in your lap.

If you have any questions about this case, or how it may affect your business, please contact your Fisher Phillips attorney.

*This Legal Alert provides an overview of a specific 5th Circuit decision. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.*

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