



Federal Court Decision Highlights Efficient And Effective Ways To Address Suspected FMLA Misuse

Insights

4.20.20

A recent decision by a New Jersey federal court highlights the importance of thoroughly investigating allegations of suspected Family and Medical Leave Act (FMLA) misuse before taking action against an employee. The decision contains several important takeaways that employers in all jurisdictions can implement to ensure that reports of suspected FMLA misuse are fairly and appropriately addressed.

Summary Of The Case

A New Jersey employer terminated an employee who traveled to and attended a Dallas Cowboys football game after reporting to his employer that he was unable to work for FMLA reasons.

The employee, who had worked for the employer and utilized intermittent FMLA leave for several years without issue, contacted the company's third party leave administrator and stated that he was unable to report for his upcoming shift because of his FMLA-covered condition. The employee, whose job required significant standing time, said he was unable to stand for extended periods of time due to his condition. His approved intermittent FMLA leave was used to cover his absence.

After reporting his absence, the employee traveled across the country and attended the NFL game in Dallas. He even made several posts about the event on social media. The posts were visible to the employee's connections – including a supervisor at his place of employment who was aware that the employee had called out of work citing a need for FMLA leave.

Suspecting FMLA misuse, the supervisor forwarded the social media posts to management and human resources. The company launched an investigation and uncovered additional information, including text messages and statements from other employees, supporting its belief that the employee had misused FMLA. The company suspended the employee pending additional investigation. At the end of the investigation, the employer concluded that he committed a terminable offense by falsifying information regarding his use of intermittent FMLA.

The employee claimed that the employer's actions constituted FMLA interference and retaliation. However, the court disagreed, finding that the employee failed to present any evidence of retaliatory animus or mistreatment from the employer. To the contrary, the employer had accommodated the employee's requests for FMLA leave for several years, without issue, and only acted after investigating the report of alleged FMLA misuse. That investigation, the court agreed, uncovered

sufficient evidence to support its honest belief that the employee had violated company policy by falsifying the reason for his absence.

The court granted summary judgment for the employer, concluding that, based on the evidence gathered by the employer, it could not be disputed that the employee was dishonest about his need for FMLA when he called out of work and instead traveled to and attended a professional sporting event.

4 Employer Takeaways

Although the “honest belief” defense has not been uniformly adopted by the courts, the New Jersey case identifies several best practices that employers in all jurisdictions can implement to curb and address suspected misuse in the workplace. By adopting the following practices, you can ensure that suspicions of misuse are swiftly, effectively, and consistently addressed, thereby minimizing the risk of liability for possible claims of FMLA retaliation.

1. Make Sure Your Leaders Can Identify Appropriate Reporting Channels

It is important that employees, supervisors, and managers have a clear understanding of where and how to report employment concerns. In the above case, the supervisor who saw the employee’s suspicious social media posts reported his concerns directly to human resources and management. Because the supervisor was aware of the reporting channels, he was able to bring the suspected misuse to the employer’s attention.

2. Identify Prohibited Actions in Company Policies

You should clearly identify prohibited actions and behaviors in your employment policies. This puts employees on notice and can support your decision to take disciplinary action. In the above case, the court noted that the employer had a policy that prohibited falsification of company reports, records, or other information. By falsely reporting an FMLA absence, the employee violated the policy. The employer cited the employee’s policy violation to support its decision to terminate his employment, which the court cited to as support for its decision to rule in the employer’s favor.

3. Conduct Thorough Investigations

In response to any allegation of misconduct or leave misuse, you should conduct a thorough and fair investigation before making *any* employment decision. By taking the time to gather evidence, obtain statements, and discuss the matter with the employee under investigation, like in the above case, an employer is ensuring that it is making a fair and well supported decision to take – or not take – action.

Importantly, because matters involving the FMLA are very fact-sensitive, you must evaluate such matters on a case-by-case basis. Each employee will face different limitations depending on their condition, so it is important to determine whether their actions are consistent with their limitations. There are occasions where participation in a non-work activity, like personal travel

limitations. There are scenarios where participation in a non-work activity, like personal travel, may *not* be considered FMLA misuse.

4. **Be Consistent**

It is important that you are consistent when articulating why you acted against an employee. Inconsistent reasoning can call into question the legitimacy of your assertion that your decision was based on an honest belief of FMLA misuse. In the above case, the court noted that the employer consistently stated its honest belief that the employee misused FMLA to attend a sporting event. The suspected misuse was the reason for the investigation, the initial suspension, and the eventual termination.

Conclusion

This case delivers a helpful message to employers about the importance of having practices in place to address suspected FMLA misuse. Implementing the above steps will put you in the best position possible to respond to reports of suspected misuse in a consistent and effective manner. For questions on adopting best practices in your organization, [contact the author](#) or your Fisher Phillips attorney.

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

Service Focus

Employee Leaves and Accommodations

Employment Discrimination and Harassment

Litigation and Trials

Counseling and Advice