

Employee States FMLA Claim Despite Never Having Taken Qualifying Leave

Labor & Employment Law Update

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Last week a Federal District Court ruled a disgruntled former employee could proceed with her interference and retaliation claims under the FMLA even though she never actually took any FMLA-qualifying leave. The case serves as a reminder of just how easily an employee triggers the statute's broad protections.

The former employee submitted completed FMLA paperwork relating to a chronic condition and the employer approved her request to take intermittent leave, as needed, in the future. She never actually took leave under the statute and, in fact, she did not even ask for any leave after her employer approved her request for intermittent leave. Yet, when she was terminated some time later, she sued claiming her employer interfered with her FMLA rights and retaliated against her for exercising her FMLA protected rights. Her employer argued it could not have "interfered with" her FMLA rights or retaliated against her for taking FMLA leave, because she had never actually taken or asked to take leave under the statute. The Court disagreed and allowed her claims to proceed.

The FMLA requires employees to provide advance notice of their need for leave whenever possible and therefore, the court reasoned, it is only logical that the statute's employee protections trigger as soon as the employee takes any action that invokes her rights under the statute. The retaliation claim is even more straight-forward. The plain language of the statute clearly prohibits retaliation against an employee who exercises *or attempts to exercise* her FMLA rights. An employee is not required to actually take leave in order to activate the statute's protections.

This and other similar decisions serve as a reminder that an employee exercises her protected FMLA rights, and therefore triggers the statute's protections, by simply putting her employer on notice of her possible need for a leave that may qualify under the Act. This could be by requesting, completing or submitting FMLA paperwork, but it does not have to be so formalized. In fact, an employee is not required to say "FMLA" or even "medical leave" in order to trigger the FMLA's protection. Anything that puts the employer on notice that an absence could be FMLA-qualifying or that an employee may need leave for a qualifying reason at some point in the future, could trigger the employer's FMLA obligations and the notice requirements.