

FMLA Doesn't Shield Employee From Dismissal Due to Misconduct Prior to Leave Request, District Court Rules

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On April 29, 2024, in *McBeath v. City of Indianapolis*, the U.S. District Court for the Southern District of Indiana granted summary judgment in favor of the City of Indianapolis on a plaintiff's claims for Family and Medical Leave Act (FMLA) interference, FMLA retaliation, and race discrimination under Title VII of the Civil Rights Act of 1964.

The court found that the plaintiff, who was on approved FMLA leave at the time she was discharged from employment for prior acts of theft of food pantry donations in violation of the city's code of ethics, had failed to offer any evidence that she would have retained her job but for her request for FMLA leave and had failed to establish that the city's stated reason for her dismissal was a pretext for FMLA retaliation and race discrimination.

Quick Hits

- The U.S. District Court for the Southern District of Indiana [granted summary judgment](#) in favor of the City of Indianapolis on the plaintiff's FMLA interference claim because the plaintiff failed to prove she had not violated city policies and that she would have retained her job had she not taken FMLA leave.
- The court also granted summary judgment in favor of the city on the plaintiff's FMLA retaliation claim despite the timing of her dismissal that occurred just a few weeks after her request for leave because the city's investigation into the theft allegations against her predated her request for FMLA leave.
- The court similarly concluded that summary judgment in favor of the city was also appropriate on the Title VII claim alleging race discrimination because the plaintiff failed to establish that her dismissal was motivated by race or that similarly situated White employees were treated more favorably under the city's policies.

Background

Mary McBeath, an African American woman, worked for the City of Indianapolis in its parks department. Her last role with the city was assistant park manager, which included responsibility for establishing and operating a food pantry at the Windsor Village Park Family Center. Her job duties included picking up donations from local stores and delivering the donations to the Windsor Village

food pantry. McBeath admitted to having her husband accompany her to pick up donations in a city-owned vehicle and transporting those donations to her home, where she claimed to store donations due to a lack of storage at the food pantry.

City employees (including McBeath) are subject to the city's policies and procedures as outlined in its employee manual, which includes a code of ethics and standards of conduct that prohibit certain unacceptable conduct such as theft and prohibit employees from using their public offices for personal gain. The city also has a policy that prohibits employees from transporting nonemployees in city-owned vehicles. Throughout her employment, McBeath had "a few" incidents of discipline for poor performance and attendance, but none of those incidents had warranted termination.

On January 24, 2022, the city received a complaint from a citizen who accused McBeath of stealing food pantry donations; the complaint included a video showing her driving a city-owned vehicle to her home and unloading donations at her residence. The complaint was turned over to the city's human resources (HR) department, which began an investigation into the complaint. HR engaged the Indianapolis Metropolitan Police Department (IMPD), which conducted its own independent investigation into the alleged theft. On February 20, 2022, the IMPD confirmed the allegations against McBeath that she and her husband were taking donated items to her residence in a city-owned vehicle. Based on the city's investigation and the investigation of IMPD, HR made the decision to terminate McBeath's employment.

On February 17, 2022, McBeath submitted a request for FMLA leave to have knee replacement surgery. Her leave request was approved for February 22, 2022, through May 19, 2022. On March 4, 2022, while on FMLA leave, McBeath's manager scheduled a virtual meeting that included HR and McBeath. McBeath was presented with the allegations of theft against her and told of the investigation and violations of city policy. At the end of the meeting, McBeath's employment was terminated.

McBeath filed suit and asserted three claims arising from her dismissal: (1) that the city had interfered with her FMLA rights by terminating her employment while she was on leave and not returning her to the position she had held prior to leave; (2) that the termination of her employment was in retaliation for her exercise of FMLA rights; and (3) that her dismissal was motivated by her race and that she had been treated less favorably than similarly situated white employees. The city filed a motion for summary judgment as to all claims, and the court granted judgment in favor of the city as to all counts.

The Court's Decision

The court addressed each of McBeath's claims separately and viewed all of the evidence in a light most favorable to her position (noting in the decision that "the facts stated [in the order] are not necessarily objectively true"). The court recounted that the FMLA makes it unlawful for an employer to "interfere with, restrain, or deny the exercise of or attempt to exercise, any right provided under [the] [FMLA]." The court focused on whether McBeath was denied any benefits afforded by the FMLA, particularly whether she was denied the right to take FMLA leave or the right to return from leave to the position she had held prior to going out on leave. As a preliminary matter, the court concluded that McBeath had not been denied the benefit of taking FMLA leave because she had been approved for and was on FMLA leave at the time of her dismissal. Thus, the court's focus shifted to whether she was denied the right to return to her job following FMLA leave.

Quoting a 2009 opinion from the U.S. Court of Appeals for the Seventh Circuit, the district court

wrote, “An employee’s right to return to work after taking leave is not unlimited; he is not entitled to ‘any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken leave.’” The court emphasized that an employee is not entitled to any greater benefits or protection than if the employee had remained continuously employed during the FMLA leave period. In other words, if the employee had not taken leave, would her employment have been terminated under the same set of circumstances? The court concluded that the city had put forth substantial evidence showing that McBeath’s employment had been terminated for committing theft in violation of the city’s employee manual—and that she would have been discharged regardless of her request for FMLA leave. Because McBeath failed to put forth any evidence that she had not violated the city’s manual, the court concluded that no reasonable trier of fact could find that she would have retained her job if she had not taken FMLA leave. On this basis, the court determined that the city was entitled to judgment as a matter of law on the FMLA interference claim.

For the FMLA retaliation claim, the court began by noting that retaliation claims can be proven by circumstantial evidence that includes a “convincing mosaic” of evidence that may include “suspicious timing, ambiguous statements from which a retaliatory intent can be drawn, evidence of similar employees being treated differently, or evidence that the employer offered a pretextual reason for the termination.” McBeath argued that the timing of the dismissal was suspicious because it came just a few weeks after she went on FMLA leave.

Instead of focusing on the date the termination decision was communicated to McBeath, the court instead focused on the date the investigation into the allegations of theft against McBeath was initiated. The court noted that the citizen complaint was received on January 24, 2022, and the investigation began a few days later, both of which predated McBeath’s request for FMLA leave on February 17, 2022. The court concluded that, based on the evidence presented by both parties, a reasonable juror could find the city’s proffered reason for discharging McBeath was honest.

Finally, the court granted summary judgment on the Title VII claim for racial discrimination because the court determined that McBeath had not established she was meeting the city’s legitimate job expectations and she failed to demonstrate that similarly situated white employees were treated more favorably. The court found that the evidence supported the city’s position that the termination decision was due to McBeath’s violations of the city’s employee manual, and that she had failed to put forth any evidence that the termination had been motivated by a discriminatory reason, such as her race.

Key Takeaways

The court’s decision affirms that the FMLA will not shield employees from the repercussions of misconduct, and exercising rights afforded by the FMLA does not immunize an employee from the consequences of conduct that warrants disciplinary action or termination of employment. The FMLA does not afford employees any greater protection than they would have had if they had not requested FMLA leave. Employers may be able to defeat an FMLA interference claim based on a termination that occurred during FMLA leave by showing that the employee would have been fired even if he or she had not taken FMLA leave. Similarly, employers may be able to overcome claims of FMLA retaliation based on the timing of the discharge by establishing that the investigatory process that culminated in the termination predated the employee’s exercise of FMLA rights.

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