

Employer Violates FMLA for Failure to Provide Calculation of When Leave Expires, Court Rules

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In a case reminding employers of their obligation to notify employees about their Family and Medical Leave Act rights, the District Court of New Jersey has ruled that an employer violated the FMLA when it terminated an employee without providing her notice that her modified return-to-work date exceeded her available leave. *Ross v. Youth Consultation Service, Inc.*, No. 02229 (D.N.J. Dec. 29, 2016).

Background

In September 2012, Janet Ross requested FMLA leave, initially stating on her designation form that her return-to-work date was “unknown.” Within weeks of submitting her form, Ross provided an updated return-to-work date of April 2013 — well beyond the 12-week maximum leave available under the FMLA. The extended leave was required because Ross had scheduled two surgeries, one in November and the second in January.

When Ross informed her employer about her modified return-to-work date, her employer did not provide her with an updated calculation of leave or inform her when her leave would expire. After Ross exhausted her FMLA leave, her employer informed her that she exceeded the amount of available time and terminated her.

Ross filed a lawsuit alleging her former employer did not provide her with proper notice after she informed it about a change in her status.

Proper Notice

The district court agreed with Ross. It noted that an employer has the burden of calculating an employee’s leave allowance and informing the employee if a change in status alters the available leave. Critically, the court said, the employer did not tell Ross what specific amount of time was available to her, did not provide a change-in-designation notice after receiving the doctor’s note, and did not communicate the “critical information” that the FMLA would not protect all of the requested leave.

Status Change

In the case of a status change, an employer should inform the employee of any remaining available leave and communicate any consequences of the updated designation. Moreover, the notice should provide sufficient information for an employee to make adequately informed decisions about how to structure leave. Although Ross's leave request would have exceeded FMLA protections and she received 12 weeks of protected leave, Ross alleged she could have scheduled her surgeries to allow her to return to work within the required time. The court agreed with Ross's allegation.

Lessons

Notice and process are critical in administering leave. Prudent employers must review carefully whether proper notice is provided before terminating an individual for exhaustion of available leave or retroactively designating leave.

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