

Are Facebook Vacation Photos Taken During Medical Leave Grounds for Employee's Termination?

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An employee on an extended medical leave to recuperate from shoulder surgery posts pictures of his active Caribbean vacation. His employer is justified in terminating him, right? Maybe not.

On April 19, 2017, the Eleventh Circuit reversed a trial court ruling and held that a former employee had raised a genuine issue of material fact regarding whether he was terminated in retaliation for using FMLA despite the former employee posting pictures from various vacations on Facebook during his time off of work to recuperate from surgery. This case, [*Jones v. Gulf Coast Health Care of Delaware, LLC*, 2017 U.S. App. LEXIS 6766 \(11th Circ. 2017\)](#), serves as a cautionary tale of why employers need to be careful and consistent while following proper steps when terminating employees—even in situations where the evidence of employee wrongdoing might appear obvious.

The plaintiff, Rodney Jones, was formerly employed as the activity director for the defendant, Accentia Health. His job included desk work as well as regular physical activity. During his employment, Accentia Health approved Jones's request for FMLA leave for shoulder surgery. When Jones was unable to resume his full-time job duties at the end of the 12-week FMLA period, Jones requested a modified duty assignment, which was rejected by Accentia Health. Jones then requested additional time off from work, and Accentia Health granted another 30 days of "non-FMLA medical leave" in order to complete his physical therapy.

During the additional 30 days of leave, Jones twice visited the Busch Gardens theme park and went on a trip to St. Martin. Jones took pictures while on the vacations—including pictures of himself on the beach, posing by a boat wreck, and in the ocean—and then posted those pictures on Facebook. An anonymous co-worker provided the pictures to management. When Jones returned to work at the end of the additional time off, Jones was suspended by his supervisor and was later terminated. Accentia claimed that Jones was fired because he "(1) posted photos from his outings in violation of the company's social-media policies, and (2) displayed poor judgment as a supervisor in posting these photos, even if this activity did not violate the company's social-media policies."

The appellate court found that Jones presented sufficient evidence that a fact-finder could conclude that Accentia Health's stated reasons for the termination were pretextual. In arriving at this decision, the court focused on inconsistencies and contradictions in the reasons presented to Jones. These inconsistencies included a formal termination letter that didn't mention the Facebook photos, and

failing to let Jones know at any time that he violated the company's social media policy.

Employers need to be consistent when taking adverse action against an employee when FMLA is involved. This includes making sure that both written and oral communications to the affected employee are consistent and clear. Employers should take the time necessary to gather the proper facts and have better communication with the potentially affected employee *before* deciding upon a course of action and *before* letting the employee know what action might be taken. This will help ensure that any eventual adverse action is communicated clearly and consistently to the affected employee and will help limit the potential for allegations of a pretextual termination.

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