

Inaccurate Statements of the Law May Result in Liability Warranting Award of Attorney's Fees

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In *Wink v. Miller Compressing Company*, 845 F.3d 821 (7th Cir. 2017), the Seventh Circuit affirmed a jury verdict in favor of the plaintiff on theories of retaliation, breach of contract and violation of a Wisconsin wage statute. The court also reversed the lower court's decision to reduce the attorney fee award due to a finding for Miller as to the claim of interfering with FMLA rights.

In 2011, *Wink* was granted FMLA leave by Miller to take her autistic son to medical appointments and therapy. *Wink*, 845 F.3d at 822. FMLA entitles eligible employees to take up to 12 work weeks of leave during a 12 month period for qualifying reasons which would include caring for a child with a serious health condition. In 2012, when *Wink's* son was expelled from day care, she again requested FMLA leave to allow her to work from home to care for her son. (FMLA does not cover working at home—however, it would allow her two full days of leave to care for her son at home.) *Id.* Miller's Human Resources department agreed to allow *Wink* to work at home whereby she would be paid for the time she worked, but not the time she spent caring for her son. In the summer of 2012, Miller cited financial problems as its reason for requiring all employees to work on its premises 5 days a week for 40 hour weeks. *Wink* was told that she had to start working in the office. *Id.* *Wink* went to the HR officer to explain her dilemma regarding the need to care for her son. She was incorrectly advised by the HR officer that FMLA only covered doctors' appointments and therapy. *Wink* never returned to work for Miller following the officer's admonishment that not coming in, as required, would result in being considered a "voluntary quit." *Id.* at 823.

The FMLA entitled *Wink* to take the leave necessary to care for her child. Based upon these facts, the court held that a reasonable jury could determine that Miller retaliated against *Wink* for asserting her FMLA right to take leave by staying home to care for her child rather than complying with the order to come in 5 days per week. *Id.* The court further upheld the award of double damages under the FMLA finding that the jury was reasonable to infer that Miller did not act in good faith when it provided incorrect advice on the coverage of FMLA benefits. The court upheld the jury's findings as to the breach of contract and wage statute as well. *Id.* at 823-24.

The court went a step further and addressed the plaintiff's cross appeal as to her attorneys' fees. The court noted that although *Wink* was unsuccessful on her claim of interference with the FMLA, this was not a proper basis for reducing the attorney's fee award by 20%. *Id.* at 824. The court reversed the district court's reduction of fees, suggesting it would not punish the attorney for adding claims or

theories that were similar and added little marginal cost to pursuing the claim. The matter was remanded to the district court with instructions to award the full amount of fees. *Id.*

Employers should stay apprised of FLMA and state wage laws to ensure proper decision-making by managers and supervisors in the workplace. Employers should further keep in mind that plaintiffs can be entitled to attorneys' fees when the employer has interfered with a federal law, such as the FMLA.

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