

New Mexico Court Rules Employee Is Entitled To Nationwide Discovery in FMLA Case

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On October 10, 2017, Judge Ritter issued the [Memorandum Opinion and Order](#) which granted a former employee's Motion to Compel and held that the former employee was entitled to information from the company's nationwide offices relating to other employees fired under the company's 100% healed policy and other FMLA or ADA complaints.

Matthew Donlin ("Donlin") worked as a general manager for Petco (the "Company"). During 2015, he began suffering "flare-ups" from his medical condition and ultimately took FMLA leave in February 2016. In May, Donlin's doctor cleared him to return to work, with certain limitations; however, the Company refused to let him return unless his doctor certified that he was 100% recovered. Ultimately, Donlin's employment with the Company was terminated after he failed to complete a reasonable accommodation package, which was a condition of his reinstatement. Donlin subsequently filed suit against the Company alleging violations of the American with Disabilities Act ("ADA") and the Family Medical Leave Act ("FMLA").

During the litigation, Donlin issued requests for production and interrogatories to the Company seeking: (1) contact information for "all persons involuntarily terminated from Petco's employ due to a failure to return to work" after FMLA leave, including all termination documents for employees who failed to request an accommodation or to certify 100% recovery; (2) contact information for all persons who after January 1, 2014 complained that Petco interfered with or denied rights under the FMLA or ADA, including documents regarding any claim and Petco's investigation of it; and (3) information and documents concerning FMLA and ADA complaints made to a governmental agency or in court."

The Company objected to each request on the grounds that the information sought was not relevant or reasonably calculated to lead to discoverable evidence, and that the request was overly broad and unduly burdensome because it was not reasonably limited to relevant circumstances of the employee's employment, geography, or decision maker.

It is a general rule that evidence regarding an employer's treatment of other employees is relevant to the issues of the employer's discriminatory intent, whether there is a pattern of retaliatory behavior, or the employer's credibility in its assertion of legitimate motives. *Spulak v. K Mart Corp.*, 894 F.2d 1150, 1156 (10th Cir. 1990). Typically this rule permitting the discovery of other employees'

complaints is limited to those that are within the same “employing unit or work unit.” However, this geographic scope may be expanded when the plaintiff shows that “there were hiring or firing practices and procedures applicable to all employing units.” *Owens v. Sprint/United Mgmt. Co.*, 221 F.R.D. 649, 653 (D. Kan. 2004).

In granting Donlin’s Motion to Compel, the Court found that because it appears that all Petco employees are subject to the same leave of absence policies, and decisions on granting leave were made by the corporate team that was not specifically located within Donlin’s “employing unit,” the employee was entitled to relevant company-wide documents. As a result, the Company was ordered to respond to the interrogatories and requests for production at issue, and pay Donlin’s attorneys fees and costs associated with filing the Motion to Compel.

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