HINSHAW

Massachusetts’ First Paid Family Medical Leave Act Verdict Yields $4.75 Million Award

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A Suffolk County Superior Court jury awarded a plaintiff, a terminated employee, nearly $4.75 million, in what is believed to be the first Massachusetts state court judgment on a retaliation claim under the Massachusetts Paid Family and Medical Leave Act (PFMLA).

The case, *Boyle v. Wayfair, Inc.*, Case No. 2184-CV-02754, offers important lessons to employers considering discipline, performance improvement plans, demotions, or termination shortly after an employee returns from protected leave.

What Happened?

In April 2019, Wayfair, Inc. (Wayfair) hired the plaintiff, Mary Boyle (Boyle) as a senior manager in its Service Innovation Division. After transitioning roles internally—and receiving performance reviews with varying levels of satisfaction—Boyle took protected leave under the federal Family and Medical Leave Act (FMLA), followed by additional leave under the cognate state PFMLA.

Boyle’s leave under the PFMLA began on January 1, 2021. Upon her return to the workplace on June 1, 2021, Boyle was put on a performance improvement plan (PIP). When Wayfair determined that Boyle had not improved, she was terminated on August 10, 2021. Notably, this termination occurred within six months of Boyle’s return from PFMLA leave.

Boyle brought suit, claiming:

1. age discrimination, in violation of G.L. c. 151B, § 4;
2. retaliation following protected activity (that is, complaining of purported age discrimination);
3. discrimination based on disability;

4. invasion of privacy, in violation of G.L. c. 214, § 1B, based on alleged disclosure of personnel records; and
5. retaliation in violation of G.L. c. 175M.

The Verdict

While the jury rejected Boyle's age discrimination claim, it found that Wayfair was liable for retaliation against Boyle due to her complaint of age discrimination and exercising her rights under PFMLA.

The jury's verdict granted $4,000,000.00 for punitive damages, $600,000.00 for emotional distress, and $75,124.65 in back pay.

The PFMLA

The PFMLA statute's design heavily favors aggrieved employees. Under the statute's anti-retaliation provision, "[a]ny negative change in the seniority, status, employment benefits, pay or other terms or conditions of employment of an employee" that occurs either during the employee's PFMLA leave or within six months of the employee's return to work is presumptive evidence of retaliation.

This statutory burden-shifting provision puts the employer in the position of demonstrating by clear and convincing evidence:

- that the negative employment action at issue was not retaliatory,
- that there was an independent justification for the action, and
- that the employer would have taken the action in the same manner and at the same time regardless of the employee's use of PFMLA leave.

Takeaways for Employers

The *Boyle* judgment highlights important factors for employers to consider as they navigate the emerging PFMLA landscape. While the six-month post-leave window created by the law does not absolutely prohibit an employer from taking disciplinary action against an employee, the statutory burden-shifting language creates a very high bar for an employer to demonstrate that the action is not based on the employee's use of protected leave.

- Employers would be wise to consult their counsel on such decisions, if made either while the employee is on PFMLA leave or within six months of that employee's return.
- As always, proper documentation and internal record-keeping are key, including documenting legitimate performance concerns before protected leave begins.

- Counsel should be involved when an employer is considering discipline, placing an employee on a PIP, or other forms of demotion to help ensure the employer is protected from liability.

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