

Employer Prevails Against FMLA Interference Claim but Sixth Circuit Declines to Apply Directly the “Honest Belief” Defense

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A telephone repair technician employee diagnosed with severe back pain was terminated by his employer for allegedly fraudulently requesting leave under the Family and Medical Leave Act (FMLA). The employee shortly thereafter sued claiming the employer interfered with his right to FMLA leave and terminated him in retaliation for requesting leave. The trial court granted the employer’s motion for summary judgment on the basis of the “honest belief” defense and the appellate court affirmed.

The appellate court noted that employer has an “honest belief” for termination under the FMLA so long as the employer made a reasonably informed and considered decision before taking adverse employment action. The employer is not required to “leave no stone unturned” or pursue all possible evidence. The appellate court found that the following facts relied on by the employer were sufficient to establish this defense with regard to the retaliation claim: the employee would often request FMLA leave in what appeared to be a strategic way to create three or four day weekends; the employee would often request leave in advance despite his own doctor indicating that his need for leave would be unpredictable; the employer obtained video of the employee performing physical tasks contradicting his claimed limitations on two days on which the employee took FMLA leave; and the employer relied on the opinion of an independent physician who concluded the employee’s video activities were inconsistent with his FMLA limitations as outlined by the employee’s personal physician.

The appellate court noted, however, that an interference claim is premised on whether an employer interfered with an employee’s FMLA rights, not why the interference occurred, and it was an open question as to whether the “honest belief” defense even applied to such a claim. The appellate court declined to resolve that issue and instead affirmed on the ground that the employee failed to establish entitlement to FMLA leave because when presented with the employer’s evidence to the contrary —the same evidence used to support the “honest belief” defense — he failed to disprove it. The court rejected that the employee’s original note from his personal doctor authorizing intermittent leave was sufficient, because to hold otherwise would provide him unchallengeable

license to take unnecessary leave. Thus, although the appellate court expressly declined to apply the “honest belief” defense to an interference claim, the court essentially ruled that the same evidence can be used to establish a lack of FMLA entitlement in the first place.

This is not an easy defense to prove. Facts and circumstances will dictate whether it is a viable option. If you have questions about your own leave policies or would like more information about [Tillman v. Ohio Bell Telephone Co., No. 11-3857 \(6th Cir., October 8, 2013\)](#).

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