

Court Finds that Employer's Failure to Return Employee to work Prior to Conclusion of FMLA Leave does not Amount to Interference

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In this case, a hotel maintenance employee who had worked for the employer for over 20 years had a history of vision problems. His employer regularly accommodated these problems by ensuring that the employee's schedule and assignments were copied in large print. Later, the employee suffered an injury, which required him to take leave. The hotel provided him with required information under the Family and Medical Leave Act (FMLA) and approved 12 weeks of leave.

Over the course of the next six months, the employee submitted conflicting doctors' notes from two different doctors. Some of the notes reported that the employee was completely debilitated, and others suggested that he could return to light-duty work. The employer attempted to get additional information from the employee's primary physician and to obtain additional information from the employee, but was unsuccessful in its efforts.

Ultimately, the employee returned to his previous position and worked the same shift and had the same level of seniority. Nonetheless, he claimed violations of the FMLA and the Americans with Disabilities Act (ADA), arguing that the hotel's failure to return him to work earlier (as he requested) amounted to FMLA interference, FMLA retaliation, and an ADA failure to accommodate.

Affirming summary judgment for the employer, the U.S. Court of Appeals for the Seventh Circuit held that the FMLA does not require job restoration to a position different than the one the employee held when he started leave. Here, there was no clear statement from the employee's physicians that he could return to his prior position, something that would have triggered the duty to reinstate. He thus could not sustain an FMLA interference claim. The retaliation claim also failed because the employee could not establish that the failure to reinstate to a lesser position was a materially adverse action. Finally, the employee's ADA claim lacked merit as the conflicting medical information did not create a material disputed fact as to his ability to return to work. Even

if it had, the accommodation that he wanted — the re-assignment of his primary job duties away from him — was not reasonable. From all appearances, the hotel’s human resources personnel knew the law, had proper FMLA processes in place, and had reached out to engage in the employee in the process of returning him to work. Having done so, the employer was properly protected from trial on these FMLA and ADA claims.

Employers must have clear policies regarding leave and management and human resources staff must be adequately trained regarding the handling of such claims and the communications required with the employees and medical professionals to ensure compliance with the law.

For more information read [James v. Hyatt Regency Chicago, 12-1511 \(7th Cir. Feb. 13, 2013\)](#).

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