

Employer Successfully Defends Termination of Employee at Conclusion of FMLA Leave

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The Tenth Circuit Court of Appeals recently held that an employer did not violate the Family and Medical Leave Act (FMLA) by terminating an employee who failed to return to work after exhausting her leave.

The employee, a billing specialist, sued her employer for FMLA interference and retaliation after she was fired for failing to return to work at the end of her FMLA leave for knee replacement surgery. The Tenth Circuit rejected the employee's interference claim because it was undisputed that the employer provided her with the full amount of FMLA leave and gave her three weeks' advance written notice that her FMLA leave would expire on December 16, 2009.

The employee requested an extended leave of absence, saying that she may be able to return to work around January 4, 2010. The employer denied the employee's extended leave request, but offered to accommodate her medical needs with reduced hours or work restrictions if she returned on December 16, 2010. The employee did not respond to this offer, and the employer terminated her employment when she failed to return to work on December 16, 2009. The employer's FMLA policy stated that employees who failed to return at the end of their leave could be terminated.

Despite the employee's claims to the contrary, the Court found no evidence that the employer took adverse action that interfered with the employee's right to FMLA leave. In fact, the employee testified that the company's human resources manager, "did everything she could" to help with "all of the FMLA issues." The court also rejected the employee's retaliation claim because she failed to offer evidence showing that the employer's reason for firing her, e.g., her failure to return from leave, was a pretext for unlawful retaliation. The Court also noted that the employee did not dispute that the employer encouraged her to return to work by December 16, 2009, and offered to provide her with any necessary work accommodations.

Employers are faced with challenging decisions when employees are not able to return at the end of FMLA leave. In many cases, an analysis of whether the employee's serious health condition that required FMLA leave is also a

disability under the Americans with Disabilities Act requiring reasonable accommodation will be necessary. For additional information read *McClelland v. CommunityCare HMO, Inc.*

Topics

Tenth Circuit Court Of Appeals, FMLA, Accommodation