

# Third Circuit Opinion Highlights Importance of Properly Designating FMLA Leave

2 min read

Aug 22, 2014

By: Linda K. Horras

Lisa Lupyan was an instructor at the defendant college. After showing signs of depression, her employer encouraged her to take a leave to deal with it. Lupyan met with an administrative supervisor, Sherri Hixson, on December 19, 2007, who told her to submit paperwork indicating that she was requesting “Family Medical Leave.” Hixson set Lupyan’s projected return to work date to April 1, 2008, based on Lupyan’s Certification of Health Provider. Lupyan’s FMLA rights were not discussed during this meeting although the college contends that it mailed a letter to her later that day advising her that she was on FMLA leave. Lupyan denies that she received this letter and denies that she had any knowledge that she was on FMLA leave.

On March 13, 2008, Lupyan submitted a doctor’s note indicating that she could return to work with restrictions. Two weeks later, the college told her that she could not work with restrictions. Lupyan thus requested and received a full release to return to work from her physician. Despite this, on April 8, the defendant told Lupyan that she was discharged due to low attendance and that she had not returned to work following the end of her 12 weeks of FMLA leave. Lupyan asserts that this was the first time she had learned that her leave was considered FMLA leave. She sued the college for FMLA interference and retaliation.

The [Third Circuit Court of Appeals agreed with Lupyan](#) that the Department of Labor regulations required written notice to an employee that she was on FMLA and that the failure to do so could constitute interference where an employee could show prejudice. In this case, *Lupyan v. Corinthian Colleges Inc.*, No. 13-1843 (3rd Cir. Aug. 5, 2014), Lupyan claimed that, had she known her leave was considered FMLA-protected, she would have acted differently with regard to her return to work. The employer argued that she had notice because its employee handbook described her FMLA benefits and that it had also sent her a letter designating her leave as FMLA.

The court dispatched the first argument quickly, finding that the handbook issued to all employees was not sufficient written notice to an employee concerning their actual FMLA leave. With regard to the letter, there was a

question of fact as to whether Lupyan had actually received it and summary judgment should not have been granted to the college. Similarly, the appeals court held that there were questions of fact as to why Lupyan was not reinstated. First, the court held that even though Lupyan had not returned upon the end of 12 weeks of leave, she could still proceed with a retaliation claim outside of the 12 week period and that the college's defenses, such as her discharge due to low enrollment, were in conflict with testimony of other college employees who stated that low enrollment did not typically lead to layoffs. Given the proximity in time to Lupyan's end of leave and questionable rational for her discharge, a jury could conclude that the employer's stated reasons were pretextual and that Lupyan was retaliated against for taking leave.

Employers should implement and follow practical FMLA policies that provide employees with prompt notice of their rights under the FMLA and clear designation of their FMLA leave and dates covered by it so that interference and retaliation issues such as those raised in this case do not become a legal nightmare.

---

*Hinshaw & Culbertson LLP is a U.S.-based law firm with offices nationwide. The firm's national reputation spans the insurance industry, the financial services sector, professional services, and other highly regulated industries. Hinshaw provides holistic legal solutions—from litigation and dispute resolution, and business advisory and transactional services, to regulatory compliance—for clients of all sizes. Visit [www.hinshawlaw.com](http://www.hinshawlaw.com) for more information and follow @Hinshaw on LinkedIn and X.*

## Topics

FMLA