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U.S. District Court in Roanoke Upholds Award of Double Damages in FMLA Leave Dispute

By former Associate Jeffrey Hord

Last week, [January 21, 2016] a U.S. District Court judge in Virginia upheld a jury verdict in favor of a terminated HR director who claimed her employer unlawfully interfered with her rights under the Family and Medical Leave Act (FMLA) and then retaliated against her when she requested leave for psychological distress.

In the case of *LaMonaca v. Tread Corporation* (W.D. Va., 7:14-cv-00249-GEC), Valarie LaMonaca had worked for Tread Corporation ("Tread") since 2009, during which time she'd been promoted to the position of Human Resources Director. On a Friday afternoon in April 2014, LaMonaca met with Tread CEO Barry Russell ("Russell") and informed him that she was experiencing acute anxiety, severe stress, and other related medical conditions, and that she was considering resigning from the company as a result of these difficulties. Importantly, LaMonaca claims that she stopped short of stating that she was actually resigning her position or that she'd decided to quit.

Following this "tense" meeting, the two sides exchanged a flurry of text messages and emails over the ensuing weekend. That Sunday, LaMonaca formally requested FMLA leave; on Monday, she missed work due to a previously-scheduled doctor's appointment. After the appointment, LaMonaca received an email from Russell saying that she was not eligible for medical leave because she had resigned from Tread on Friday, and was therefore no longer an employee (an ex-employee can't claim FMLA benefits). When the company refused to reconsider its decision, LaMonaca filed a civil suit in federal court, alleging that Tread "willfully and in bad faith violated the FMLA and" its governing regulations.

The FMLA provides unpaid leave due to family and/or medical reasons for qualifying employees of private employers with 50 workers or more. An employee can seek FMLA leave for a serious personal illness, injury or impairment that renders the employee unable to do essential job functions; the care of a seriously ill spouse, child or parent; the birth of a child; the care of a newborn; or adoption and foster care matters. Under Section 105 of the FMLA, employers are prohibited from interfering with, restraining, or denying the exercise of — or the attempt to exercise — any FMLA right, and are also prohibited from discriminating or retaliating against an employee or prospective employee for exercising their FMLA rights or opposing or complaining about their employers' unlawful practices under the FMLA.

LaMonaca's case went to trial in July 2015, approximately 14 months after she filed her complaint. Following a two-day trial, the jury returned a verdict for the plaintiff, finding that LaMonaca was entitled to recover on her interference and retaliation claims. LaMonaca was awarded back pay of $54,468.89, including pre-judgment interest, as well as an equal amount in statutory liquidated damages (for a total of $108,937.78), plus attorney's fees and costs totaling $209,759.69.

In challenging the verdict, the employer argued that "no reasonable jury" could have found that LaMonaca was entitled to FMLA leave because she had resigned before requesting leave, and because she "did not have a serious health condition" that prevented her from performing the essential functions of her job at Tread. In upholding the jury win, U.S. District Judge Glen Conrad found that there was a sufficient evidentiary basis for the jury to find that LaMonaca did not resign in April 2014. Judge Conrad also cited the testimony of the plaintiff's physician, who diagnosed her as suffering from an acute anxiety disorder and advised her to take a 30-day medical leave of absence from her job, as proof that LaMonaca was "incapacitated" under the meaning of the FMLA and/or unable to perform the functions of her director position. The court found that Tread's violation of the FMLA was in bad faith.

Employers can take several lessons from this case. First, it illustrates the importance of confirming all changes in employment status in writing. If an employee says that she's resigning, ask her to send a letter or email to that effect; otherwise, promptly send your own email to the employee memorializing your understanding. The ambiguous, unconfirmed nature of the parties'

awkward Friday exchange in this case soon led to confusion and, later, litigation. Second, it highlights a common misconception among many "old school" employers that psychological difficulties like severe stress, anxiety and depression aren't "medical conditions" that trigger FMLA protections. As Tread Corporation learned in this case, an opinion from the employee's mental health care provider that she is "unable to work or unable to perform any one of the essential functions of [her] position" is enough to survive summary judgment and very possibly prevail at trial.
