

Seventh Circuit Clarifies that Denial of Leave is Not Necessary for an FMLA Interference Claim

On June 1, 2022, in the case of *Salvatore Ziccarelli v. Thomas J. Dart, et al.*, the Seventh Circuit rendered an opinion clarifying that an employer can violate the Family and Medical Leave Act (FMLA) by discouraging an employee from exercising rights under the FMLA without actually denying a leave request.

The plaintiff, Salvatore Ziccarelli, had been employed by the Cook County Sheriff's office as a corrections officer since 1989. Over the years, he had periodically utilized FMLA leave for several serious health conditions. In 2016, based on a recommendation from his doctor, Mr. Ziccarelli sought to utilize his remaining allotment of FMLA leave, along with sick leave and annual leave, to enroll in a treatment program for his condition. When Mr. Ziccarelli reached out to the FMLA leave manager to request information on utilizing his remaining FMLA leave, she allegedly told him "you've taken serious amounts of FMLA ... don't take any more FMLA. If you do so, you will be disciplined." It should be noted that the leave manager hotly contested Mr. Ziccarelli's version of the events and claimed she told him that if he used FMLA to which he was not entitled, it would be coded as unauthorized and an attendance review would follow. Regardless, as a result of this conversation, Mr. Ziccarelli did not utilize his remaining FMLA leave and resigned his position with the sheriff's office.

The trial court granted summary judgment for the defendants on all of Mr. Ziccarelli's claims finding that there was no adverse employment action and no denial of FMLA benefits. Mr. Ziccarelli appealed, arguing that a reasonable jury could determine that the conversation with the leave manager discouraged him from taking FMLA leave. The Seventh Circuit overturned the trial court on this issue, holding that an employer could discourage an employee from exercising their rights under the FMLA without actually denying the leave request.

In so holding, the Seventh Circuit determined that a statutory interpretation of the language required a reading that an interference or restraint without denial was sufficient to violate the statute. Further, the Circuit Court found precedent for this holding within its own circuit and among other circuit courts' decisions. Therefore, the Seventh Circuit held that if Mr. Ziccarelli's version of the facts were deemed true, then an FMLA violation occurred because Mr. Ziccarelli had FMLA leave available to him, he was discouraged from using it by being told that if he took more leave he would be disciplined, and as a result, he was prejudiced because he chose not to use his remaining FMLA leave. However, the court did note that if the leave manager's version of the events were found to be true, then it "could not see a viable FMLA claim." The case was remanded to the trial court for a jury to decide the factual issue of whether the FMLA violation occurred.

This decision is not favorable for employers. Allowing claims to proceed on the subjective evidence of employees being "discouraged" from taking leave suggests that more of these cases will proceed to trial. This reiterates the importance of documentation, and that employers should remain conscientious about the nature of communications with employees requesting leave, perhaps even documenting such conversations with a confirming email.



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