THE FAMILY AND MEDICAL LEAVE ACT: FIRED AFTER COMING BACK FROM LEAVE, SERIOUSLY!

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An employee was granted time off under the Family Medical Leave Act (FMLA) following surgery. At the expiration of the FMLA leave, the employee then requested and received a non-FMLA leave extension. After returning from the extension, the employee was initially suspended and then, later, fired. The company fired the employee due in part to the fact that the employee had taken photos while on non-FMLA leave at certain locations and posted the photos on his personal Facebook page. The employee sued the company (Massey, H. & Simonsen, C., 2017). This case has been written only as an instructional case study that examines only certain and specific basic emerging and traditional legal and management concepts. Although this case notes the seriousness of this real-world situation, the legal and business concepts are presented and discussed in a manner to promote business student learning only. As a result, the case will be presented and discussed in this manner. The names of the parties, certain locations and certain facts have been changed to protect various individuals. This case is appropriate for graduate and undergraduate business law and management classes.

THE BACKGROUND

The use of the Family and Medical Leave Act (hereafter, FMLA) has become quite prevalent in our society and may present many challenges in the work environment. It is the United States "first and only law designed to help women and men meet the dual demands of work and family" (Guide to the Family and Medical Leave Act, 2016, p 1.). It was officially launched as law on August 5, 1993 and was established "to guarantee that workers facing an unexpected medical catastrophe, or the birth or adoption of a child would be able to take needed time off from work." (Kubasek, N.K., 2012, 2009, p. 508).

It was signed into law by President William Jefferson Clinton. Incredibly, this law

has been estimated to have been used by more than an astounding 200 million times (Guide to the Family and Medical Leave Act, 2016). Accordingly, the employment and national culture of the United States has undergone substantial change as a result of this law.

As utilized across the United States, the FMLA has allowed women and men the necessary opportunity to provide invaluable care and assistance to those loved ones requiring this help. Those individuals with serious health needs may be provided assistance without the caregiver fearing the loss of employment (Guide to the Family and Medical Leave Act, 2016).

Concerns with the application of the FMLA in the workplace will definitely be noted by those employees seeking to use it. However, it will also affect those requiring care and receiving this care from the employees seeking to use the FMLA (Guide to the Family and Medical Leave Act, 2016).

THE CASE

Ronald Johnson was hired for the position of Activities Director for Ace Healthcare (hereafter, Ace), a nursing facility which provides long tern care for its residents, in 2004. His job responsibilities required him "keeping up with resident charting and care plans, providing calendars for programming events, organizing volunteer programs, planning parties and outings, arranging entertainment activities for the residents, and generally overseeing his staff to ensure that these various programs were carried out" (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017, p.2).

Johnson's position, understandably, required a substantial amount of administrative deskwork. However, his position also required manual labor such as "unloading vehicles, decorating for parties, shopping for supplies, and traveling around the community with residents, helping them get on and off the Ace bus, and clearing paths for wheelchairs during these outings" (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017, p.3).

Johnson had five (5) individuals to assist him in coordinating the responsibilities and accomplishing his tasks. However, Johnson was the type of person who enjoyed personally devising and developing the activities of the day. In addition, he constantly performed the manual tasks of arranging for the activities (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017).

In 2014, Johnson discovered that he had a rotator cuff that was torn and needed surgical repairing. Accordingly, this surgery would require him to be away from work for this procedure as well as to recover from this procedure. After performing

the appropriate background research pertaining to this situation, Ace noted that Johnson was eligible for FMLA leave and granted Johnson time off from work for the surgery and necessary recovery time. This time period would last from September 2014 until December 2014. Johnson would be required to report to work on December 19, 2014. However, Johnson's physician informed Ace on December 18, 2014 that Johnson required additional recovery time and physical therapy for his shoulder. Johnson's physician stated that Johnson would not be able to return to work and resume his required duties until February 1, 2015. (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017).

Interestingly enough, despite his physician's advice and medical recommendation, Johnson still wanted to return to work at the end of the FMLA leave. Johnson interpreted his physician's recommendation as for him to continue physical therapy. Johnson felt that he could return to his administrative duties and have his assistants perform the necessary physical tasks. However, Ace declined to allow Johnson return to his responsibilities as the Activities director until certified by Johnson's physician. In that Ace was steadfast in not allowing Johnson to return to duty until certified by his physician, Johnson did not request for light-duty certification. Johnson, instead, requested and was allowed an addition 30 days of *non-FMLA medical leave* to complete his physical therapy. Johnson felt that Ace pushed and compelled him to asking for this extra leave (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017).

THE EXTRA 30 DAYS

While Johnson was out during the extra 30 days of leave, he did not sit around the house while he recovered. Johnson went to an amusement park a couple of times while in Florida. He took pictures of the Christmas decorations and sent them by text message to his staff at Ace (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017). Johnson stated that he wanted to provide them with decorating ideas for the company. Johnson also visited his home in an island in the Caribbean for several days (Lambert, J. A., 2017). While there, he also took pictures of himself by the ocean and posted these pictures on his Facebook page (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017).

On January 19, 2015, Johnson returned to work as planned. He presented Ace with a document from his physician certifying his fitness to immediately return to work and resume his responsibilities as Activities Director. Ace responded by displaying the pictures previously taken by Johnson and posted on Johnson's Facebook page. After requesting how these pictures were obtained, the Ace representative stated that "you can thank your wonderful staff, they just ratted you out" (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017, p. 5). The representative also stated that "maybe if you're going to have a Facebook account, you shouldn't have

it on public" (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017, p. 5).

Johnson was then informed by the company, that in light of these pictures, Johnson could have returned at an earlier point. Johnson was suspended so that an investigation could be performed. In addition, Johnson was allowed a chance to provide his input on these charges and Johnson chose not to respond. Shortly thereafter, Johnson was relieved of his position. (Rodney Jones v. Gulf Coast Health Care of Delaware, LLC, 2017).

THE DECISION TO SUE

Johnson found his predicament quite difficult. As a result, Johnson filed for legal action (Lambert, J. A., 2017).

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29 U.S.C. § 2615(a)(b)

29 C.F.R. § 825.220(c)

29 U.S.C. § 2612 (q)(1)(D).

EXHIBIT 1

Family and Medical Leave Act (FMLA):

"A 1993 federal statute providing that employees may take unpaid, job-protected leave for certain family reasons, as when a family member is sick or when a child is born." "The statute applies to business with 50 or more employees. An employee may take up to 12 weeks of unpaid leave per year." This right to a leave applies to "a total of 12 workweeks of leave during any 12-month period."

Source(s):

(a) 29 U.S.C. § 2612 (q)(1)(D).

(b) Kubasek, N.K., Brennan, B.A., & Brown, M. N. (2012, 2009). *The Legal Environment of Business: A Critical Thinking Approach* (6th ed.). Pearson Education, Inc., Upper SaddlevRiver, New Jersey 04758.

(c) Garner, B. A. (Eds.) (2009). *Black's Law Dictionary*, (9th ed). Eagan, MN: West, A Thomson Reuters Business.

EXHIBIT 2

The Family and Medical Leave Act (FMLA), creates two types of claims:

1. ***Interference Claims*** – "an employee asserts that his employer denied or otherwise interfered with his substantive rights under the Act" (failure to restore to work).
2. ***Retaliations Claims*** – "an employee asserts that his employer discriminated against him because he engaged in activity protected by the Act" (termination).

Source(s):

(a) Strickland v. Water Works & Sewer Bd. Of City of Birmingham, 239 F.3d 1199, 1206 (11th Cir. 2001)

(b) 29 U.S.C. § 2615(a)(b)

(c) 29 C.F.R. § 825.220(c)

(d) 29 U.S.C. § 2612 (q)(1)(D).

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EXHIBIT 3

The Family and Medical Leave Act (FMLA), laws affecting the two types of claims:

1. ***Interference Claims*** –

- **"**an employee returning from FMLA leave is entitled to be restored by the employer to the position of employment held by the employee when the leave commenced" or to an equivalent position" 29 U.S.C. § 2614(a)(1)

- "If the employee is unable to perform an essential function of the position because of physical or mental condition, including the continuation of a serious health condition or an injury or illness also covered by workers' compensation, the employee has no right to restoration to another position under the FMLA."
29 C.F.R. § 825.216 (c)

  Note: "an employee returning from FMLA leave who cannot perform the essential functions of his job due to a physical condition need not be reinstated or restored to another position" 29 C.F.R. § 825.216 (c)

- "the employer may have a uniformly applied practice or policy that requires each such employee to receive certification from the healthcare provider of the employee that the employee is able to resume work" 29 U.S.C. § 2614(a)(1)

  Note: "…the employee may be terminated" 29 U.S.C. § 2614(a)(1)

Source(s): 29 U.S.C. § 2614(a)(1)
29 C.F.R. § 825.216 (c)

2. Retaliations Claims –

In order to prevail, it must be demonstrated that the "employer's actions 'were motivated by an impermissible retaliatory or discriminatory animus.'"
Jones v. Gulf Coast Health Care of Delaware, LLC, Case No. 16-111142 (April 19, p. 16, 2017).

"'only the most blatant remarks, whose intent could mean nothing other than to discriminate on the basis of' some impermissible factor constitutes direct evidence of discrimination"
Jones v. Gulf Coast Health Care of Delaware, LLC, Case No. 16-111142 (April 19, p. 16, 2017).

Temporal Proximity – "Close temporal proximity between protected conduct and an adverse employment action is generally 'sufficient circumstantial evidence to create a genuine issue of material fact of a causal connection.'"
Jones v. Gulf Coast Health Care of Delaware, LLC, Case No. 16-111142 (April 19, p. 18, 2017).

Pretext – "Inconsistencies and contradictions in the reasons presented" for termination.
Glasser, N.M. & Hoerner, J.K. (2017). Are Facebook vacation photos taken during medical leave grounds for employee's termination?. Retrieved from https://www.natlawreview.com/article/are-facebook-vacation-photos-taken-during-medical-leave-grounds-employee-s

Source(s):

(a) Strickland v. Water works & Sewer Bd. Of City of Birmingham, 239 F.3d 1199, 1206 (11th Cir. 2001)

(b) Jones v. Gulf Coast Health Care of Delaware, LLC, Case No. 16-111142 (April 19, p. 16, 2017).

(c) Jones v. Gulf Coast Health Care of Delaware, LLC, Case No. 16-111142 (April 19, p. 16, 2017).

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