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FMLA Win for Employers

Employers are regularly faced with the difficult decision to discipline or terminate an employee for poor performance or include an employee in a layoff on the eve of protected leave under FMLA or a sexual harassment complaint for fear of a claim of gender discrimination, interference with FMLA rights, or unlawful retaliation by the employee. However, there is some good news for employers in our jurisdiction. Just recently, the Sixth Circuit Court of Appeals affirmed summary judgment in favor of an employer on such claims when the employer was able to demonstrate that other factors led to the employee's termination. [Mann v. Navicor Group](#), No. 11-4028, 6th Cir., 2012. This case is a nice win for employers faced with this difficult decision.

In [Mann](#), the Plaintiff worked for a health care advertising agency as a senior art director. She was hired in 2006 but as early as January 2007, her employer started documenting performance issues. She was placed on a performance improvement plan and demoted in February 2007. In her new position, she worked with a different team and received exceptional evaluations in July 2007. Thereafter, the Plaintiff's title and position were restored. In August 2007, the Plaintiff reported that her supervisor was treating women poorly. An investigation was completed and it was determined that the supervisor's conduct was bad but not gender specific. Her supervisor was reprimanded for his conduct. The Plaintiff was offered an opportunity to transfer but opted to stay in the same department. In July 2008, the employer decided to layoff employees due to financial concerns. The Plaintiff was chosen for layoff by another manager who had been overseeing her department due her history of poor work performance in production. While she did have some good evaluations, the work that she excelled in was less than 20% of the employer's business.

In the meantime, the Plaintiff learned that she needed to take FMLA leave to care for her mother and made the request to human resources. At that point, the decision that Plaintiff would be laid off had already been made. The Plaintiff's manager learned of her request for FMLA leave on the same date that he was preparing for her termination. The employer decided to go forward with the termination but extended her severance pay from 2 weeks to 11 weeks due to her personal circumstances. Despite that, the Plaintiff sued claiming gender discrimination, sexual harassment, and retaliation in violation of Title VII of the Civil Rights Act of 1964, and retaliation and interference with her rights under FMLA.

The Court granted judgment in favor of the employer on all claims and on appeal, the Sixth Circuit upheld the decision. The Court held that the Plaintiff failed to meet her burden of proof on claims of gender discrimination and harassment. And, evidence for the employer proved that the decision to terminate was unrelated to her FMLA leave since the decision maker was not aware of her request for leave when the decision to terminate was made. Accordingly, the Plaintiff's request for leave did not shield her from the previously made decision to terminate her employment.

In summary, employers should remember that those taking FMLA leave do not have greater protection from layoffs than those who do not take leave. Nonetheless, these types of decisions are some of the most difficult for employers. All factors must be weighed to determine whether it is in the best interest of the employer to proceed with termination since litigation might be inevitable. Under the facts in [Mann](#), the employer had documentation showing that the decision to terminate was made before the request for FMLA was made. Also, the decision maker was not the target of Plaintiff's prior complaints regarding gender discrimination or harassment. While winning on appeal, the employer still had significant costs involved in defending the lawsuit. Therefore, such decisions must be made carefully and with all factors considered.

***For additional information on Employment or Labor Law issues,
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