

Airline Management Newsletter

December 30, 2011

No FMLA Violation for Firing Employee Who Abused Leave

Executive Summary: A federal trial court recently granted summary judgment in favor of Southwest Airlines on a former reservation agent's claim the airline terminated him in retaliation for his use of leave under the Family and Medical Leave Act (FMLA). The court held that the former employee failed to dispute the airline's legitimate, non-retaliatory reason for his discharge – that he abused FMLA leave by using it in conjunction with regularly scheduled days off and to take time off on holidays.

Background

Rydalch was employed as a reservations agent for Southwest in Salt Lake City, Utah. In 2004, Southwest closed its Salt Lake City reservations center and Rydalch transferred to the Houston, Texas office. His family remained in Salt Lake City. Because of his seniority, Rydalch had difficulty getting off work on the holidays.

In 2004, Rydalch suffered a back injury in an automobile accident. He requested FMLA leave and was permitted to take eight days of leave per month for medical purposes, as he requested.

In 2007, the airline began to question whether Rydalch was using FMLA leave in conjunction with his time off. Records from 2007 revealed that Rydalch had used FMLA leave 35 times to excuse himself from work on days just before or after his previously scheduled time off. Additionally, Rydalch frequently used FMLA leave on important dates and holidays. The airline also determined that Rydalch had a pattern of taking flights to and from Salt Lake City on days he requested FMLA leave. A company representative met with Rydalch on more than one occasion to discuss his use of FMLA leave and explain Southwest's Attendance Program, which provides, in part, that the abuse of sick leave will result in termination.

On December 24, 2007, Southwest learned that Rydalch had not reported to work and had requested FMLA leave to excuse his absence. Subsequently, the airline determined that Rydalch had purchased a ticket to fly from Houston to Salt Lake City, departing on December 22 and returning on December 27. The flight had been booked in June 2007. Rydalch had been scheduled to work December 24, 26 and 27 and made no effort to trade work shifts with other employees. In addition to missing work on December 24, Rydalch used FMLA leave on December 26 and 27.

After holding a hearing in accordance with the collective bargaining agreement applicable to Rydalch's employment, Southwest terminated him for violating its Attendance Program.

Rydalch subsequently sued Southwest, claiming he was discharged in retaliation for taking FMLA leave.

FMLA Retaliation

Under the FMLA is it unlawful for an employer to "discharge or in any other manner discriminate against any individual for opposing any practice made unlawful by the [FMLA]." To establish a prima facie case of wrongful termination under the FMLA, a plaintiff must show: (1) he engaged in a protected activity, (2) the employer took an adverse action, and (3) a causal connection exists between the protected activity and the adverse action. If the plaintiff establishes a prima facie case, the employer must offer a legitimate, non-retaliatory reason for the adverse action. If the employer provides such a reason, the plaintiff must provide evidence from which a jury could find by a preponderance of evidence that the employer's proffered reason is pretextual.

Legitimate Reason for Discharge

The court held that Southwest's honest belief that Rydalch abused FMLA leave in violation of its Attendance Program was a legitimate, non-retaliatory reason for discharging him. "An employer's belief that an employee is misusing FMLA leave provides sufficient justification to terminate his employment if that belief is honest." The court held that in determining whether an employer's belief of misconduct is honest, it must examine the facts "as they appear to the person making the decision" without a review of the "wisdom or fairness" of the decision. The court found that Southwest's belief that Rydalch was abusing FMLA leave was honest in light of the fact that the hearing officer, an independent decision-maker, determined that Rydalch abused FMLA leave after reviewing the documentation presented by Southwest and after considering Rydalch's explanation of the events.

The court also held that Rydalch failed to establish pretext because he did not present any facts suggesting his apparent pattern of misusing FMLA leave had some compelling explanation other than abuse. The court also held, however, that even if Rydalch had shown some alternative explanation, Southwest's decision was not unworthy of belief. "The existence of alternative, reasonable inferences of evidence does not establish pretext."

FMLA Interference

The court also rejected Rydalch's claim that Southwest violated the FMLA by interfering with his ability to take leave. The court held that Southwest's decision to terminate Rydalch's employment was not based on his *proper* exercise of FMLA leave; it was based on his *misuse* of FMLA leave. The court rejected Rydalch's argument that the termination of his employment constituted a form of interference because this argument "conflates his discharge claim with his interference claim." Further, the court held that Rydalch failed to present evidence that Southwest interfered with his exercise of FMLA leave in any way apart from terminating his employment.

Employers' Bottom Line:

Southwest's ability to support its decision by presenting records demonstrating Rydalch's abuse of FMLA leave was key to the court's ruling in the airline's favor. Employers should ensure that they have accurate records of their employees' use of FMLA leave and that they enforce their leave policies consistently.