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EMPLOYMENT LAW

Magic Words Not Necessary for Leave to Be Covered by FMLA

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Special to the Legal

In *Raimondi v. Wyoming County*, 2016 U.S. Dist. LEXIS 67653 (M.D. Pa. May 24, 2016), the court deconstructed an employer's mishandling of an employee's request for leave and in doing so provides employers with insightful, step-by-step guidance on how to handle requests for leave when evaluating whether such requests qualify under the Family and Medical Leave Act (FMLA) and the act is not specifically mentioned by the employee.

TRAVEL TO CARE FOR SICK PARENTS

The plaintiff, Debra Raimondi, was employed by Wyoming County as director of its 911 center. In June 2014, Raimondi traveled to her parent's home in Indiana after her father, who had recently had surgery and was in a nursing home, requested that Raimondi come home to care for her mother. Raimondi told the county that her father was ill and her mother "might have broken her hand or something" and requested leave "to get ready for her dad to come home from the hospital."



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RESIGN OR BE TERMINATED

On or about July 1, 2014, while on leave, Raimondi called the county commissioner's office and spoke with two county commissioners, Thomas S. Henry and Ronald P. Williams. Williams informed Raimondi that she would not be restored to her position and that her employment would be terminated unless she chose to resign. On July 8, 2014, Raimondi met with the defendants and informed them that she would not resign. Raimondi was fired on or about July 10, 2014.

Raimondi filed a four-count complaint against the county and the individual commissioners. One count of interference or retaliation under the FMLA survived the defendants' motion to dismiss and, at the close of discovery, Raimondi filed a

partial motion for summary judgment on the issue of the defendants' liability.

The crux of Raimondi's claim was simple: she needed FMLA leave to care for her parents who suffered from serious health conditions and the county failed to restore her to her position after her leave. The court construed Raimondi's allegation as one presenting a claim for FMLA interference.

WARNING: DO NOT BURY YOUR HEAD IN THE SAND

Opposing Raimondi's motion, the county, joined by the individual commissioners, argued that Raimondi was not entitled to FMLA leave because she did not specifically request FMLA forms. The court admonished all of the defendants for burying their collective heads in the sand in response to Raimondi's request for leave to care for her ailing parents. Relying on the U.S. Court of Appeals for the Third Circuit's decision in *Hansler v. Lehigh Valley Hospital Network*, 798 F.3d 149 (3d Cir. 2015), the court explained that an employee need not expressly assert rights under the FMLA or even mention the FMLA. An employee need only state a qualifying reason for the leave and fulfill the notice requirements under the act.

Deconstructing the exchange between the parties, the court highlighted the defendants' errors in handling Raimondi's request for leave. Blunder number one: The defendants mistakenly believed that Raimondi had to say the magic words—FMLA. Blunder number two: After receipt of Raimondi's request for leave, the defendants never provided Raimondi with an opportunity to cure any deficiency in her notice because they failed to ask Raimondi for clarification of her leave request or a medical certification. Blunder number three: The defendants never provided Raimondi with FMLA leave application forms, the designation notice, rights and responsibilities notice or eligibility notice documents under the FMLA.

PAID LEAVE POLICIES CANNOT USURP FMLA PROTECTIONS

The defendants also argued that Raimondi was not entitled to FMLA leave because the county's leave donation policy supplants the FMLA leave until the employee exhausts all available leave. Rejecting this argument, the court explained that the FMLA allows paid leave under an employer's leave policy to run concurrently with unpaid FMLA leave. Accordingly, FMLA protections apply to any qualifying leave, irrespective of whether the employer designates the leave as "personal leave," "vacation" or "sick time." Thus, no paid leave policy may usurp protections afforded to eligible employees under the FMLA.

MEDICAL EMERGENCY NOT NECESSARY

Dismissing the defendants' final argument regarding Raimondi's alleged ineligibility for FMLA leave, the court explained that FMLA leave is not limited to "medical emergency" situations. Rather, where an employee requests

leave to care for a family member, it is only required that the family member have a serious health condition. Raimondi's mother suffered from multiple conditions, including Alzheimer's disease. Her father suffered from ongoing heart issues and had recently had surgery for a broken bone in his leg. These ailments, of course, presented serious health conditions under the FMLA.

Once again, the defendants raised lack of knowledge as a defense and once again the court rejected the argument. Turning to the language of the statute, the court explained that where an employer

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lacks sufficient information about the reason for an employee's use of leave, the employer should inquire further of the employee to ascertain whether the leave qualifies under the FMLA.

EMPLOYERS MUST REASONABLY INTERPRET INFORMATION

After finding that Raimondi was entitled to FMLA leave, the court tackled the issue of notice and explained that the standard for notice is neither formalistic nor stringent—an employee need only provide sufficient information for an employer to reasonably determine whether the FMLA may apply to the leave request. The key consideration for determining whether an employee's notice is adequate, according to the decision, is how the information conveyed to the employer

is reasonably interpreted. Raimondi's request for leave "to get ready for her dad to come home from the hospital," and statements that her father was ill and her mother "might have broken her hand or something" satisfied the FMLA's notice obligations as a matter of law.

Finally, the court found that by informing Raimondi prior to the conclusion of her FMLA leave that she could not return to her position, the defendants denied Raimondi of the FMLA benefit of restoration to her position at the conclusion of her leave. The defendants argued that Raimondi would have been terminated irrespective of her leave due to performance issues. While poor performance or misconduct prior to an employee's FMLA leave may serve as the basis for the denial of FMLA restoration rights, the court found that testimony in the matter established that Raimondi's termination was clearly related to her leave. Critically, there was testimony that the defendant commissioners were very concerned that Raimondi was away on leave "because she was a department head and there was a very big project going on that she should have been there for that whole project." The defendants produced no evidence (other than self-serving affidavits) of Raimondi's alleged performance issues predating her leave.

Raimondi makes clear that employers cannot merely sit on their hands and claim ignorance because the magic words, Family and Medical Leave Act, are not used when an employee requests leave. Rather, an employer should engage an employee, within the dictates of the FMLA, to determine whether the requested leave qualifies under the act. •