



DELAWARE

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FAMILY AND MEDICAL LEAVE ACT

Lies, damn lies, and the FMLA

by Lauren E. Moak

The Third U.S. Circuit Court of Appeals, which hears cases from Delaware, Pennsylvania, and New Jersey, recently upheld a district court's decision dismissing an employee's claims of discrimination in violation of the Family and Medical Leave Act (FMLA) and various other claims. But there's a hitch — the employee lied about the disease that caused him to miss work. The court's opinion provides a helpful reminder that employee fraud can provide grounds for termination, even when the employee actually is suffering from a disease.

Oh, what a tangled web we weave

John Prigge began his employment with Sears in 2007. Five years earlier, he was diagnosed with bipolar disorder, but he never informed Sears of his diagnosis. After he was hired, he began to miss work because of his bipolar disorder. He missed at least two days of work and left early on "multiple occasions." To justify his absences, he told his supervisor that his prostate cancer, formerly in remission, was active again. Several months later, he was hospitalized for seven days for depression and suicidal thoughts. It was then that he confessed to his employer that he was actually suffering from bipolar disorder, not prostate cancer.

Prigge's supervisor requested that he provide documentation from his mental health provider and his urologist supporting his absences and clearing him to return to work. Prigge provided some documentation, but despite routine contact with his supervisor, he failed to provide all the requisite documents. He was later terminated for failing to provide

medical certifications excusing all his absences.

Prigge filed suit against Sears, alleging, among other things, discrimination under the FMLA. The court dismissed his lawsuit because he failed to show that Sears' legitimate nondiscriminatory reason for his termination was pretextual.

The truth will set you free

Sears offered two reasons for Prigge's termination: (1) failure to provide adequate documentation and (2) lying about his actual illness. Prigge responded that Sears provided incoherent and inconsistent explanations for his termination, but the court ruled that he had to rebut each of its proffered reasons — a burden he failed to meet.

With respect to his failure to provide adequate documentation, the court found that Prigge admitted to (1) missing work, (2) receiving a letter from Sears communicating his failure to provide adequate documentation for his absences, and (3) failing to provide the documentation requested. Regarding the lie, the court found that he acknowledged lying about his illness and failed to provide any justification for his misconduct. Had he told the truth, he would have been entitled to the FMLA leave he took as well as other protections available under the Act.

Bottom line

To be entitled to protection under the FMLA, an employee must tell the truth. That includes telling the truth about the need for leave and the underlying illness. Just as an employee may be lawfully terminated for falsely reporting that FMLA leave was taken for medical reasons when it wasn't, the Third Circuit's opinion indicates that an employee may be discharged for lying about his underlying illness. The court's decision is a helpful reminder that your policies addressing fraud and dishonesty are not suspended merely because an employee seeks the benefits of an antidiscrimination law.

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