

Depressed Employee's Vacation Leave Request Did Not Qualify For FMLA Protection

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The vacation request of an employee suffering from depression and anxiety did not qualify as a leave request under the Family and Medical Leave Act (FMLA), according to a recent decision of the Eleventh Circuit Court of Appeals. While the leave might have proven medically beneficial, the court found that it did not qualify for FMLA protection because the employee would not have been incapacitated for any period of the leave.

Hurley v. Kent of Naples, Inc., No. 13-10298 (March 20, 2014).

Six years ago, Patrick Hurley, the chief executive officer of a security company subsidiary, sent an email to Gil Neuman, the chief executive officer of the parent company, setting forth an 11-week "vacation schedule" for the following two years. Neuman denied the request and asked to meet with Hurley who claimed that his "medical/health professionals" had advised him that taking vacation time was a "necessity" going forward. However, he did not mention that he was suffering from depression and anxiety. During a discussion of the issues on the following day between Hurley and Neuman, Hurley was discharged for "insubordinate behavior and poor performance."

A week later, and with knowledge of Hurley's termination, Hurley's doctor filled out an FMLA form, noting that Hurley suffered from depression, although the doctor could not determine the frequency or duration of any incapacity. Hurley then filed a lawsuit in federal district court, alleging that he had been fired for exercising his right to FMLA leave. The lawsuit did not include any specific allegation that Hurley was unable to work or was incapacitated. The employer contended that Hurley's vacation request had not qualified for FMLA protection, and that he had not been discharged because of the request.

Both parties filed motions seeking summary judgment, and the district court denied both motions. The case then proceeded to trial where Hurley testified that he had requested leave for medical reasons, but acknowledged that his wife had chosen the vacation/leave days without input from a health care professional. The jury's verdict in favor of Hurley was inconsistent: The jury found that Hurley's leave request had not been the cause of his termination, but nevertheless awarded Hurley \$200,000 in damages for that termination. The jury also awarded Hurley \$200,000 in liquidated damages, \$354,000 in front pay, and \$244,000 in attorneys' fees, along with court costs. The trial court then denied the employer's motion for a new trial.

The employer appealed, asserting again that Hurley had not qualified for FMLA leave, and arguing that the jury verdict had been inconsistent with its damages award. In response, Hurley contended that he could bring a claim under the FMLA without actually qualifying for leave because he had provided sufficient notice and needed only to "potentially qualify" for FMLA leave.

The Eleventh Circuit disagreed with Hurley, and held that an employee must *actually*—not potentially—qualify for FMLA leave in order to assert an interference or retaliation claim; it also determined that the district court had erred by denying the employer's motion for judgment as a matter of law on Hurley's claims because his vacation request had not qualified as leave under the FMLA.

It was undisputed that Hurley suffered from a chronic serious health condition within the meaning of the FMLA. Hurley, however, failed to establish the required period of incapacity to trigger the protections of the Act. The FMLA does not extend its protections to a leave that is medically beneficial simply because the employee has a chronic health condition. Because Hurley had admitted that his leave had not been for a period of incapacity, he failed to meet the burden of proving that his vacation/leave request qualified for protection under the FMLA; therefore, he was not entitled to damages under that statute.

The decision would likely have been different had Hurley provided, with his vacation request, some evidence or information that he would be treated for his depression and anxiety during his absence. Without that specific connection between the leave and either treatment or a period of illness, Hurley was unable to prove that his request had been related to his serious health condition.

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