

Homeless clinic supervisor can't prove leave factored into demotion

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The Family and Medical Leave Act (FMLA) guarantees that an employee will not be subjected to an adverse employment action for exercising her right to take medical leave. However, the FMLA doesn't entitle the employee to any right, benefit, or position she wouldn't have been entitled to had she not taken FMLA leave. Likewise, the Americans with Disabilities Act (ADA) protects an employee from being subjected to an adverse employment action because of a disability. Employers should take care to manage the interplay between the FMLA and the ADA when an employee has a disability that may need to be managed with medical leave.

Properly implemented FMLA and ADA policies protect you when it becomes necessary to take an adverse employment action against an employee who has taken FMLA leave or has an ADA-covered disability. But you must exercise extreme caution to ensure the decision is unrelated to the employee's ADA accommodation or FMLA leave request. How should you handle a complaint against an employee returning from medical leave? The following case provides some insight.

Setting the scene

Tresa Floyd is currently employed by the Maricopa County Department of Public Health, where she has worked for about 10 years. In 2010, she was diagnosed with multiple sclerosis (MS), and she told her supervisor, Corinne Velasquez, about her diagnosis.

In October 2013, Floyd was employed as an operations supervisor at the county's Healthcare for the Homeless Clinic when she experienced a flare-

up of her MS symptoms. She informed Velasquez that she needed assistance to deal with the new symptoms of her disability. She requested and was granted the ability to work from home temporarily.

After two weeks, Floyd's condition wasn't improving, so she requested permission to continue telecommuting. Velasquez denied her request, telling Floyd that, as a supervisor for the clinic, she needed to be on-site. Velasquez also suggested that Floyd voluntarily step down from her supervisory position to assume a less demanding one.

Supervisor venting

Rather than voluntarily stepping down from her supervisory position, Floyd requested FMLA leave. She was on leave from October 31, 2013, through January 13, 2014.

Shortly after Floyd took leave, Velasquez sent an e-mail to the director of public health in which she complained about the difficulty of meeting demands when she had three employees out on medical leave. Velasquez's e-mail concluded: "Sorry—I'm just venting."

Velasquez initially assumed the day-to-day responsibility for the homeless clinic while Floyd was on leave. During that time, she observed aspects of the operations that were inefficient and that she had previously directed Floyd to correct. She was concerned that the clinic floors were dirty, the clinic work flow was inefficient, and the delegation of duties was insufficient.

Investigating coworker complaints

Just before Floyd was scheduled to return from medical leave, the nurse supervisor at the clinic filed a complaint about her with HR. Another

coworker complained to HR that Floyd made unprofessional comments. Velasquez also shared her concerns about Floyd's performance issues in the areas of staff training, attendance, communication, and equity; delegation of responsibility; and clinic work flow/process changes. Floyd was notified of the employee complaints.

On January 13, 2014, Floyd returned to work part-time. Meanwhile, HR continued to investigate her coworkers' complaints. During the investigation, additional allegations about Floyd were raised. Velasquez again suggested that she step down from her supervisory position.

HR briefed the deputy director of the agency during the course of the investigation, and he concluded that Floyd shouldn't continue in her supervisory role. There's no evidence that the deputy director was aware of her disability or medical leave when he directed HR to prepare the disciplinary notice of intent to demote her.

Was demotion interference with FMLA and ADA rights?

Floyd alleged that the agency interfered with her FMLA rights and discriminated against her on the basis of her disability. She claimed that the agency considered her use of FMLA leave when it made the demotion decision, pointing to her supervisor's "venting" e-mail, Velasquez's suggestions that she voluntarily step down, and the timing of the demotion after her return from leave. But she had no evidence that those factors played a role in the demotion decision.

The agency presented evidence demonstrating that its demotion decision was based on legitimate nondiscriminatory reasons. The investigation revealed, among other things, that Floyd used county resources for personal benefit, intentionally disregarded her supervisor's directive to implement process changes, and engaged in inappropriate behavior. Floyd's claims were dismissed.

A word to the wise

In this case, the employer followed the necessary steps to grant the employee her requested FMLA leave, even allowing her to take additional leave as

an accommodation under the ADA. The issue wasn't whether Floyd was given the leave and accommodations she requested, but whether an adverse employment action was taken based on her use of the leave. Because temporal proximity was part of the dispute, the agency's care in keeping the issues of leave and accommodation separate from its investigation into the allegations of her inappropriate conduct played a large role in the outcome of this case.

Keep in mind that an employee who has exercised her right to FMLA leave or requested an ADA accommodation isn't shielded from warranted discipline based on misconduct. You should take care to investigate complaints against employees—even when the employee is on FMLA leave. If possible, choose a decision maker for the corrective action who doesn't have knowledge of the employee's leave or accommodation request. That helps you demonstrate that the adverse employment action was unrelated to the leave or the accommodation request.

Furthermore, ignoring complaints about an employee could cause additional issues down the road. Had the agency ignored the complaints about Floyd and avoided making a disciplinary decision because she was returning from FMLA leave, it could have opened itself up to liability for allowing her inappropriate conduct to go uncorrected.

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