

Federal court of appeals holds Ohio employer liable for FMLA violation based on delayed job restoration because the employer failed to notify employee in writing, at the outset of employee's FMLA leave, that failure to submit required return to work medical certification would result in denial of job restoration, and because employer did not have a uniform policy or practice of requiring such medical certification from all employees before returning to work from medical leave.

The following facts were presented in the case of Casagrande v. OhioHealth Corp., decided by the Sixth Circuit Court of Appeals (with jurisdiction over all federal courts in Michigan, Ohio, Kentucky, and Tennessee) on December 20, 2016:

Plaintiff, Joseph Casagrande, was hired as a Registered Nurse at Riverside Methodist Hospital in Columbus, Ohio in December 2011. He took a two-week medical leave in August 2012, i.e., before he was FMLA eligible, and took a second medical leave starting in November 2012 and continuing beyond his one-year anniversary from his date of hire. Plaintiff became FMLA eligible in December 2012, but at that time the hospital mistakenly believed he was not yet eligible for FMLA leave.

In early January 2013, Plaintiff informed the hospital he was able to return to work on January 18, 2013, but the hospital denied job restoration on that date, stating that Plaintiff must first "provide the proper return to work documentation," including a doctor's release to return to work. On February 27, 2013, Plaintiff submitted a return to work release from his physician, but the hospital did not restore Plaintiff to work until March 12, 2013. Two days later, Plaintiff filed an FMLA lawsuit in federal court, and in June 2013, the hospital transmitted a payroll check to Plaintiff for back pay for the period from January 18 to March 12, 2013. Plaintiff refused to cash the check and continued with the lawsuit.

Based on the above facts, a federal district court in Columbus granted summary judgment in favor of the hospital.

On appeal, however, the Sixth Circuit Court of Appeals reversed the lower court's decision. The Court of Appeals ruled that **the Plaintiff was legally entitled to a favorable judgment on his FMLA interference claim**, which means Plaintiff is entitled to an Order requiring the hospital to pay his attorneys' fees. The court of appeals reached this conclusion for the following reasons:

- (1) Under applicable FMLA regulations, the hospital was required to inform Plaintiff, at the outset of his FMLA leave, that it has a uniform policy or practice of denying job restoration after medical leave unless and until the employee provides a doctor's release confirming his/her ability to return to work, but the hospital failed to do so.

AND

- (2) In order to lawfully deny job restoration after Plaintiff informed the hospital he was able to return to work, the hospital must have had a uniform policy or practice of requiring employees to submit return to work medical certification before returning to work. The hospital could not satisfy this requirement because it did not require Plaintiff to submit return to work medical certification before he returned to work from medical leave in August 2012.

We suspect the above ruling may surprise employers and some attorneys. At a minimum, this ruling provides strong incentive for employers to examine their FMLA-related forms, policies, and practices to confirm compliance with applicable Department of Labor FMLA regulations.

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