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Employer's Honest Belief Sufficient to Defeat FMLA Retaliation Claim

In a welcome decision to employers, the Third Circuit decided last week, for the first time, that an employer's mere "honest belief" that an employee misused FMLA leave is sufficient to defeat a retaliation claim. As an employee claiming retaliation for using protected FMLA leave must prove that the very exercise of that right was a determinative factor in the employer's decision to take adverse action against her, in other words that there was *retaliatory intent*, it is good news for employers that they can now successfully defend against claims simply by showing they believed in good faith that the employee misused what was otherwise protected leave. While the Seventh, Eighth, and Tenth Circuits have reached similar decisions, this was previously an open issue in the Third Circuit.

Also of note, the Third Circuit rejected plaintiff's claim that his employer failed to accommodate his disability under the ADA. While the FMLA (unlike the ADA and most state law analogues) does not require employers to provide reasonable accommodation, a request for leave under the FMLA may under certain circumstances now qualify as a request for a reasonable accommodation under the ADA.

In *Capps v. Mondelez Global, LLC*, plaintiff Capps was a long-time employee who suffered from arthritic pain in his legs and hips. He requested and received intermittent FMLA leave over a period of many years for that same condition, and every six months plaintiff's physician re-certified him for that leave. During his employment, Capps was arrested — and briefly incarcerated — for drunk driving. Months later, the employer learned of his arrest. According to the company's records, the employee had requested and taken FMLA leave on days when he had been arrested, incarcerated, or appearing in court for the offense. The company accordingly terminated Capps' employment for misusing FMLA leave.

The district court granted summary judgment to the employer on Capps' FMLA retaliation claims "because the record evidence showed that Mondelez based its decision to terminate Capps' employment on an honest belief that Capps misused that leave." The Third Circuit affirmed, finding that plaintiff could not show that Mondelez's legitimate, nondiscriminatory reason for terminating Capps' employment — its reasonable belief that Capps misused and was dishonest about his use of FMLA leave — was pretextual, and that retaliation was the real cause for termination. The

Third Circuit summed it up nicely: “Where an employer provides evidence that the reason for the adverse employment action taken by the employer was an honest belief that the employee was misusing FMLA leave, that is a legitimate, nondiscriminatory reason for the discharge.”

While retaliation claims are typically fact-intensive, the Third Circuit’s decision offers employers a lighter standard when defending against such claims. Employers now need only show they have a good faith, “honest,” basis for their adverse employment decision: they need not prove they were actually correct in their determination. The heavy burden employers commonly face in obtaining summary judgment on FMLA retaliation claims (and perhaps under other statutes) may now have been lightened by *Capps*.

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