CCM ALERT

November 20, 2019

Violating the FMLA When No FMLA Leave Was Requested: A Cautionary Tale

Violating the FMLA can be very expensive. In a recent decision dated November 12, 2019, *Valdivia v. Township High School District 214* the defendant school district was hit with a verdict that will cost it more than $225,000 even though the jury only awarded the plaintiff $12,000 in back pay. But that's not even the worse part.

The plaintiff in *Valdivia* never actually asked for FMLA leave. *Valdivia* is a cautionary tale and stands for the proposition that employees have FMLA rights if they provide their employer with enough facts that FMLA leave would be otherwise appropriate.

The Facts in *Valdivia.*

Noemi Valdivia worked successfully as an administrative assistant for a high school district located in Arlington Heights. From 2010 through 2016 she worked as an assistant to the associate principal for instruction at Elk Grove High School. During her time at Elk Grove she received excellent performance reviews and rarely missed work.

In mid-June she received a promotion to the position of assistant to the principal at Wheeling High School. Shortly thereafter, Valdivia's mental state deteriorated. She experienced insomnia, weight loss, uncontrollable crying, racing thoughts, and exhaustion. She started arriving to work late and leaving early.

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Valdivia did not conceal her symptoms from her employer. She met with her principal Angela Sisi and told Sisi: she was feeling overwhelmed, she was losing weight, she was not able to sleep, and she was not hungry. When Sisi attempted to give Valdivia more projects, Valdivia refused them.

Two days after the first conversation with Principal Sisi, Valdivia spoke with Sisi again. Once again, she described in detail what was happening to her. Valdivia asked Principal Sisi to give her a ten-month position instead of her twelve-month job. Sisi declined the request.

Valdivia had a third conversation with Principal Sisi. Sisi told Valdivia that she needed to decide whether she was staying or leaving. Valdivia sought out Sisi four or five more times after that conversation to discuss whether she should accept employment elsewhere, or stay with the school district. Feeling pressure from Sisi, Valdivia submitted a letter of resignation dated August 4, 2016. Five days later, Valdivia showed up at Principal Sisi's home and asked to rescind her resignation. Sisi denied Valdivia's request.

The Issue of "Notice" Under the FMLA.

It is undisputed that Valdivia never specifically requested FMLA leave either orally or in writing. Similarly, Principal Sisi never offered Valdivia FMLA leave even though the district provided FMLA leave to its employees. The trial court and the Seventh Circuit Court of Appeals were asked to decide whether Valdivia adequately notified the district of her need for leave triggering a right to FMLA. Both courts answered "yes," even though Valdivia never mentioned the FMLA.

Employees Do Not Have to Specifically Request FMLA Leave to be Protected by the Statute.

Relying on a case from 2003, *Byrne v. Avon Prods., Inc.*, 328 F.3d 379, 381-382 (7th Cir. 2003), the court in *Valdivia* said, "[O]bservable changes in an employee's condition . . . present an obvious need for medical leave, thereby obviating the need for an express request for medical leave."

Put another way, "Employees do not have to specifically ask for FMLA leave to be legally entitled to it." In *Valdivia* the court held that the school district should have offered Valdivia FMLA leave even though she didn't specifically request it, because:

- Valdivia with her supervisor numerous times and described her deteriorating mental health;
- She asked for the accommodation of a ten-month position rather than a twelve-month position,
- Valdivia told her supervisor she was incapable of assuming new assignments.

These facts were sufficient to trigger Valdivia's FMLA rights.

Employer Takeaways.

There have been three Seventh Circuit Court of Appeals' decisions affirming that an employee does not have to specifically request FMLA leave in order to be entitled to it. Illinois employers that are subject to the FMLA must train their supervisors to look for changes in employees' behavior that might tend to suggest that the employee is suffering from a serious health condition.

If an employee makes a request for a "leave" or an "accommodation" to a supervisor this request should be interpreted as a specific request for FMLA leave even if the employee does not use the magic acronym "FMLA."

Finally, employers should be alert to third-party communications either from friends or family of an employee that might serve as notice that an employee is in crisis and entitled to FMLA leave.

A Final Thought On Damages.

The Valdivia decision must be immensely frustrating to the district and its attorneys. Valdivia never invoke her need for FMLA leave yet the district was found liable. The jury only awarded Valdivia $12,000 in back pay but the district will wind up paying so much more. Under the FMLA, Valdivia is also entitled to $1,241.09 in prejudgment interest and she is entitled to $13,241,09 in liquidated damages. The real financial blow to the district is it had to pay Valdivia's attorney fees totaling $196,348.13. This case will cost the district more than $500,000 once the district tallied its own fees and appeal costs. It was an expensive lesson.

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