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Attorney: Employers must document reasons for termination or risk retaliation claims

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HARTFORD, Conn. (Legal Newsline) — The plaintiff's victory in a lawsuit alleging retaliation in hiring practices by a past employer offers lessons to businesses about the importance of carefully considering and documenting personnel decisions, according to a Connecticut attorney.

Connie Sue Summerlin sued Almost Family Inc. in January 2012, alleging that the company engaged in retaliation against her for taking Family and Medical Leave Act leave and filing a Workers' Compensation claim. After her position at Almost Family Inc. was eliminated while she was on FMLA leave following a work-related injury,

Summerlin applied for three full-time positions at the company but was not hired for any.

Almost Family hired Summerlin as a per diem nurse, a position she left after accepting a job at a new company. Summerlin subsequently applied for two other positions at Almost Family but was not hired for either.

In March 2014, U.S. District Court Judge Warren Eginton, of the District of Connecticut, denied the defendant's motion for summary judgment, and in April 2015, a jury found in favor of the plaintiff, with a final judgment set by the court of \$502,402.05.

Eginton denied the defendant's motion for a new trial in November, and Almost Family appealed in December.

That amount included interest, costs and plaintiff's attorneys' fees, as well as a doubling of the original damages as requested by the plaintiff under the liquidated damages provision of the FMLA.

Attorney Barry Waters of the Murtha Cullina law firm says the defendant

in this case made the mistake of not being prepared with objective reasons for the decision not to hire Summerlin for any of the positions for which she applied.

“Employers sometimes do not carefully think through the business justification for their personnel decisions and therefore struggle to articulate it later in a hearing or trial,” Waters told *Legal Newsline*.

“This happens because managers sometimes don’t feel they have to justify or support their decisions with an objective rationale, failing to foresee the possible need to explain the decision later to a third party.

“In *Summerlin*, the hiring manager essentially testified that it was her prerogative to make the hiring decision and that no one should question it.”

Waters also said that the potential for the award of double damages should be taken into account by businesses when deciding whether to contest a FMLA-related lawsuit.

“In dealing with a claim, employers should engage in a cost-benefit analysis,” Waters said. “It is important to know ahead of time that if you lose a statutory claim, like FMLA and wage and hour, your exposure will include actual loss times two.”

Waters said that careful decision-making and documentation should always be part of hiring procedures and that it is important to consider cost factors when faced with a retaliation claim.

“Be self-critical and self-aware in evaluating your proposed personnel decisions,” Waters said. “If a claim is asserted, avoid being defensive and engage in a cost-benefit analysis with your legal counsel and look for a business-wise solution.

“Understand that some cases have to be tried and cannot be reasonably resolved, so make sure you are prepared to take the case all the way.”

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