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Employment Attorneys React to Appellate Court Ruling: Be Specific Regarding Leave

The Connecticut Appellate Court has ruled 3-0 in favor of the defendant Hartford Board of Education in an employment termination case.

By Robert Storace | July 22, 2021

Connecticut Appellate Court building at 75 Elm St., Hartford. Photo: Google

The takeaway for employment attorneys in a work discrimination claim that the Connecticut Appellate Court affirmed in favor of the defendant Hartford Board of Education is to never assume it's clear what type of medical leave your client is taking, according to employment law experts.

"If you are an employment law attorney with a client taking leave, you better make sure that client is explicit in the type of leave he or she is taking," said employment law attorney Patrick Boyd (https://www.theboydlawgroup.com/patrick-j-boyd.html), founding partner of Boyd Law Group in Stamford. "Individual employees should be explicit in the type of leave they are taking and to put it in writing and the employment law attorney should make sure their client is specific about that type of leave." Boyd is not involved in the litigation at hand.

The issue of leave was at the crux of the matter in *Monts v. Board of Education of the City of Hartford.*

The Connecticut Appellate Court, in a 3-0 ruling July 16 (https://drive.google.com/file/d/15VJexMr0ABT9-bpV4omvC0qnlyrph9tT/view?usp=sharing), said the Hartford Board of Education was within its rights to terminate Helen Monts, a secretary in the facilities department of Hartford's Opportunity High School, following two negative performance reviews. The Appellate Court upheld a jury verdict in Superior Court.

On appeal, Monts and her attorneys raised several points including that the lower court failed to charge the jury on her claim of interference with the Family and Medical Leave Act of 1993.

The problem with that argument, the Appellate Court and several law employment experts said, is that Monts, who was on workers' compensation leave for several on-the-job injuries, never made it clear to anyone that she was on FMLA. That claim of a violation of the FMLA came after Monts was terminated.

"There is nothing in the record to suggest that plaintiff ever requested FMLA leave, and thus the defendant had no specific notice that she was interested in utilizing it," said Appellate Court Judge Stuart Bear, writing for the court. "Additionally, it is clear that the defendant's policy with regard to the nonconcurrent applications of workers' compensation and FMLA leave was long-standing, and that it worked to the benefit of the plaintiff and other employees because workers' compensation leave applies only to a work-related personal injury or illness, while FMLA leave could be used for nonwork-related situations such as the need to care for an ill or injured family member."

Employment attorney Daniel Schwartz (https://www.daypitney.com/professionals/s/schwartz-daniel-l), a partner at Day Pitney in Hartford, who isn't involved in the litigation, echoed Boyd.

"The lesson learned for employers is the best way to avoid these disputes is to have a written policy, such as one related to the FMLA. There does not appear to be have been a written policy regarding the interplay of the FMLA and workers' compensation," Schwartz said.

Employment attorney Salvatore Gangemi (http://www.murthalaw.com/our_people/337), a partner with Murtha Cullina in Stamford, who is also not involved in the litigation, said he sees no viable appealable issues for Monts, who had negative performance reviews in January and February 2016. She was fired in March 2016. She was also on modified work duty at the time of her termination for injuries to her leg and knee, among others.

"I do not see appealable issues here," Gangemi said. "It is hard to explain why the reviews were not accurate and the plaintiff had to do that. Just because you might engage in protected activity (workers' compensation leave) does not insulate you from being fired for performance reasons."

Said Schwartz: "I do not see any appealable issues. There are no new issues of law that would interest the Connecticut Supreme Court."

Employment attorney Robert Mitchell (https://www.mitchellandsheahan.com/attorney/mitchell-robert-b/), a shareholder with Mitchell & Sheahan in Stratford, said: “The court concluded the plaintiff did not ask for FMLA leave and the reality is the Board of Education showed she did not do a very good job at work.” Mitchell isn’t involved in the litigation.

Representing Monts is James Sabatini of Sabatini & Associates in Newington. Sabatini didn’t respond to a request for comment Thursday.

Representing the defendant Hartford Board of Education is Lisa Lazarek of Metzger Lazarek & Plumb in Hartford. Lazarek didn’t respond to a request for comment Thursday.

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