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How Much FMLA Leave Is Too Much?



FLORIDA

Bar none, the [Family and Medical Leave Act \(FMLA\)](#) is the hardest employment law to administer for employers and the easiest to abuse by employees. That double whammy often results in frustrated employers making rash decisions, which, of course, lead to lawsuits. And so goes the following case, in which the employer gave the employee more than the required amount of FMLA leave and then terminated him for taking several vacations during his time off.

Textbook FMLA Leave

Rodney Jones worked as the activities director for Accentia, a long-term-care nursing facility, from 2004 until he was fired in 2015. His duties included keeping up with resident charting and care plans, providing calendars for programs and events, organizing volunteer programs, planning parties, arranging entertainment activities for the residents, and generally overseeing his staff to ensure that various programs were carried out.

His job involved substantial desk work and planning, but his duties also included regular physical tasks, such as unloading vehicles, decorating for parties, shopping for supplies, and traveling around the community for outreach programs.

During the last 2 years of his employment, Jones also organized and participated in resident outings, which involved traveling around the community with residents, helping them get on and off the Accentia bus, and clearing paths for wheelchairs during the outings. Although he had five assistants to help him organize and execute activities, he preferred to be "hands-on" with the planning and was always physically involved in setting up for volunteer events.



Jones learned in 2014 that he needed to undergo shoulder surgery to repair a torn rotator cuff, and he would have to take time off work to recover from the surgery. Accentia determined that he was eligible for FMLA leave and granted him time off from September 26, 2014, until December 18, 2014, so that he could undergo the surgery and fully recover.

He was scheduled to return to work on December 19. But on December 18, his doctor reported that he wouldn't be able to return to work and resume physical activity until February 1, 2015. The doctor's report also stated that he needed to continue physical therapy on his shoulder.

When 12 Weeks Isn't Enough

Despite the recommendations of his doctor and his physical limitations, Jones still wanted to return to his job as activities director at the end of his FMLA leave. He understood his doctor's report to simply mean that he needed to continue physical therapy, not that he was prohibited from working entirely. He therefore asked his supervisor, Donald Daniels, to allow him to return to work on light duty.

Jones wanted to perform desk duty and computer work, with his staff covering the physical aspects of his job. However, Daniels refused to reinstate him as activities director until he could submit an unqualified fitness-for-duty (FFD) certification, which his doctor failed to issue before the end of his FMLA leave.

Jones maintains that if Daniels had allowed him to return to work on light duty, his doctor would've certified him to return to work in that capacity. But because Daniels was adamant that he couldn't return to work on light duty, Jones didn't ask his doctor for a light-duty certification.

He instead requested additional time off from Accentia and was granted another 30 days of non-FMLA medical leave so he could complete his physical therapy. He claims that he felt Daniels forced him into requesting the additional leave.

Recovering on the Beach

While he was on the 30 days of additional leave, Jones twice visited Busch Gardens in Tampa Bay, Florida, and went on a trip to St. Martin island in the Caribbean. He spent his time at Busch Gardens walking around and taking pictures of the park's Christmas decorations. He sent the pictures to his staff via text message, hoping to give them ideas for decorating Accentia's facilities. He also visited his family in St. Martin for 3 days. He posted photos from the trips on his Facebook page, including pictures of himself on the beach, posing by a boat wreck, and in the ocean.

Jones eventually returned to work on January 19, 2015, as planned, meeting with Daniels at the beginning of the day. During the meeting, he presented Daniels with an FFD certification confirming that he could immediately resume his job as activities director. Daniels responded by showing Jones the photos from his Facebook page, which depicted the trips he had taken while he was on medical leave.



When Jones asked how he had obtained the photos, Daniels responded, "You can thank your wonderful staff[—]they just ratted you out," but also remarked, "Maybe if you're going to have a Facebook account, you shouldn't have it on public." Daniels then informed Jones that "corporate" believed, based on the Facebook posts, that he had been well enough to return to work at an earlier point.

Jones was subsequently suspended so that Daniels could investigate his conduct during his medical leave. Although he was given an opportunity to respond to the charges in a letter, he failed to do so. Several days later, his employment was terminated.

Jones sued under the FMLA, advancing two related but distinct types of claims. First, he alleged that Accentia "interfered" with his right to take leave under the FMLA, and second, he claimed that the company "retaliated" against him because he chose to exercise his right to leave under the Act. A trial judge kicked the case to the curb without a trial, and Jones appealed.

Interference Claim

Jones' interference claim was based on Accentia's refusal to allow him to return to work with certain physical limitations, even though it had allowed two other employees with different job functions to return with restrictions. He had requested on multiple occasions that he be allowed to resume his job as activities director on "light duty," but he was denied such a reinstatement.

Accentia's response was twofold: (1) that Jones forfeited his right to reinstatement when he requested and obtained extended medical leave at the end of his FMLA leave and (2) that Jones failed to provide an FFD certification, which the company uniformly requires employees to submit before returning from FMLA leave.

Importantly, the FMLA provides for only 12 weeks of leave and doesn't suggest that the 12-week entitlement may be extended. Jones' FMLA leave began on September 26, 2014, and ended on December 18, 2014. At the expiration of his FMLA leave, he requested and was given another 30 days of separate medical leave. Significantly, the additional medical leave wasn't an extension of his FMLA leave.

According to the court, an employer doesn't interfere with an employee's right to reinstatement if it terminates the employee after he takes more than the 12 weeks of leave permitted by the FMLA. Jones argued that was irrelevant because he asked to return to his job as activities director at the end of his FMLA leave but was instead forced to request an additional 30 days of medical leave. However, he wasn't "forced" to take the additional leave; rather, he requested the 30-day extension because he was physically unable to resume his job duties at the end of his FMLA leave.

In November and December 2014, Jones told his supervisor, Daniels, that he wanted to return to work on light duty. As part of that light duty, he hoped to perform his desk-duty functions but have his assistants perform the physical aspects of his job. But Daniels refused to allow him to return to work in a diminished capacity, instead requiring him to submit a full FFD certification before returning.



The FMLA regulations provide that an employee returning from FMLA leave who cannot perform the essential functions of his job because of a physical condition need not be reinstated or restored to another position.

Retaliation Claim

To support his claim that he was retaliated against for taking FMLA leave, Jones argued that Accentia offered inconsistent reasons for his termination. The formal termination stated only, "As you have declined to provide any additional information, the decision has been made to terminate your employment effective immediately based on the information available."

According to Jones, the only explanation he was provided at the time he was suspended and then terminated was that he was being fired for abusing and misusing FMLA leave by engaging in activities, posted on his Facebook page, that demonstrated his ability to return to work earlier.

Jones wasn't told when he was fired that he had violated Accentia's social media policy or that his posts on Facebook indicated poor managerial judgment. And during his deposition testimony, Daniels cited myriad additional reasons that purportedly influenced his decision to terminate Jones, including his view that Jones unnecessarily prolonged his recovery and went on vacation when he should have been recuperating from his surgery.

Daniels could point to no company policy requiring Accentia employees to remain at home or refrain from traveling while they were on medical leave. Instead, he maintained that Jones violated the "spirit" of medical leave—to rehabilitate and recover.

Daniels also remarked that the posted photos indicated that Jones didn't receive therapy for a week and that he was exceeding his medical restrictions. But a letter from Jones' physical therapist stated that he was a model patient who never missed a therapy session. Daniels also acknowledged that before terminating Jones, he was aware that Jones had never missed any therapy sessions.

On appeal, Accentia also argued that Jones was terminated for posting on Facebook photos that violated the company's social media policy, which states that employees can be terminated if their social media posts have an adverse effect on coworkers. Daniels claimed that Jones' posts had an adverse effect on Accentia employees, noting that they were anonymously reported and he heard gossip about them circulating throughout the workplace. Accentia maintained that the photos therefore created a morale issue among employees.

But Jones wasn't informed during his suspension meeting or in his termination letter that he had violated Accentia's social media policy. In addition, Daniels conducted no further investigation into the anonymous complaint, and neither he nor any other Accentia official could identify any employee who was adversely affected by Jones' Facebook posts.

Finally, there was evidence that the purpose of Accentia's social media policy, as discussed during managerial training, is to prevent employees from posting harmful or negative comments about the company's staff or facilities. According to the court, Jones' Facebook posts were clearly far afield from that area of concern.



Because Accentia offered multiple inconsistent explanations for Jones' termination (some of which were implausible), the court of appeals concluded that his retaliation claim should go to a jury. *Jones v. Gulf Coast Healthcare of Delaware, LLC* (11th Cir., 2017).

Learning from Our Mistakes

This case is chock-full of teaching moments. First, even though this issue didn't come up, after Jones exhausted his FMLA leave, the Americans with Disabilities Act (ADA) might have required Accentia to provide additional leave (which he was given) or reasonably accommodate his light-duty restrictions (which wasn't considered). Be cautious about demanding a complete release to return to work without restrictions.

Second, the FMLA requires employers to provide leave when employees meet certain requirements, but you aren't allowed to dictate that an employee stay home during his leave (as long as the activity isn't inconsistent with his restrictions). And finally, you should be careful and thorough in describing the reasons for termination at the time of termination. If you later add to, change, or try to spin the reason, your shifting explanations may be used to argue that none of your reasons are true.