

Federal FMLA Retaliation Claims Get Easier to Prove in Connecticut

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The Second Circuit Court of Appeals recently held that employees bringing claims of retaliation under the federal FMLA need only prove that their exercise of FMLA rights was a “motivating factor” in an adverse employment action, and not the “sole factor.” [Woods v Start Treatment and Recovery Centers](#). This case reverses the Second Circuit’s previous position on the issue.

The plaintiff worked as a substance abuse counselor for defendant. She took FMLA leave to deal with a legitimate medical condition. Within 3 weeks of returning to work from leave, she was fired. Defendant claimed it was due to her well documented poor performance. Plaintiff argues it was due to her exercise of FMLA rights.

The District Court found for the company. The Second Circuit vacated the decision because it concluded the District Court relied on the wrong section of the law, and the incorrect standard of proof, when rendering its decision.

The Circuit Court reviewed two sections of the FMLA that arguably applied. Section 2615(a)(2), which was used by the District Court, prohibits an employer from discharging or discriminating against an employee for opposing any practice made unlawful by the Act. Under this section, the District Court held that the “but for” standard applied, and an employee must show that the sole reason for termination was retaliation for exercising FMLA rights.

The Second Circuit, however, relied on section 2615(a)(1), which makes it illegal to interfere with, restrain, or deny any right provided by the law. It discussed how retaliation for

exercising actual FMLA rights, in contrast to retaliation for opposing some practice, is more aptly covered under 2615(a)(1) than (a)(2). In addition, it also ruled that the lower “motivating factor” standard applies to section 2616(a)(1), and not the higher “but for” standard. The Court left open whether the “but for” or “motivating factor” standard applies to section 2615(a)(2) retaliation claims based on the opposition theory.

As a result of the Court’s decision, plaintiff’s claims will again be examined by the District Court using the newly enunciated standard to see if her exercise of FMLA rights was at least a motivating factor in the termination decision. If so, she wins, as she no longer has to prove it was the sole factor.

The ruling eases the burden employees must meet when bringing retaliation claims after exercising FMLA rights.

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