

CLIENT ALERT: Massachusetts Federal Court Concludes Supervisors May Be Individually Liable for FMLA Retaliation

On November 4, 2013, the United States District Court for the District of Massachusetts held that public officials can be sued in their individual capacity for retaliation under the Family and Medical Leave Act ("FMLA"). Beyond simply highlighting the fact that supervisory employees, both in the public and private sector, can be found individually liable under a variety of federal (and state) laws, this case highlights the need for employers to carefully train their supervisors and for supervisors to refrain from making improper and inappropriate statements which can and will come back to bite them.

In *Chase v. U.S. Postal Service*, the plaintiff was a letter carrier in the Brookline, Massachusetts post office. He received good performance reviews until several injuries caused him to be absent from work and need FMLA leave. Plaintiff's manager at the post office expressed unhappiness with his absences and asked the post offices' union steward to convince plaintiff not to file for workers' compensation because it would reflect badly on the manager's statistics. At several points, the manager allegedly made comments on the public address system at the post office which were found to further establish his animus towards plaintiff's leave taking. These announcements were: "Will Bob Chase, the injury fraud specialist, please report to the office" and, "There's a job posted on the bulletin board for an injury compensation specialist since you're the biggest fraud when it comes to injuries."

While on leave, the plaintiff (and his brother who also worked at the same branch) was arrested for possession of cocaine with intent to distribute. Eventually, the plaintiff received pretrial probation. The plaintiff was discharged due to his drug arrest and publicity surrounding the arrest. The plaintiff filed a union grievance concerning his termination which went to arbitration. An arbitrator held that the postal service had just cause to terminate the plaintiff.

The Court concluded that plaintiff's FMLA retaliation claim against the manager survived summary judgment. In finding that plaintiff had presented sufficient evidence to establish the pretextual nature of his termination, the court relied primarily on the animus exhibited by the supervisor's statements, including those broadcast on the public address system. Additionally, there was evidence that the manager was trying to convince the plaintiff to return to work even after the manager learnt of the drug arrest.

While this case concerned the issue of whether a public official can be held individually liable under the FMLA, it is clear from this and other decisions that supervisors in the private sector could also be found individually liable for retaliation under the FMLA.

This case should stand as a reminder to employers and supervisors of the importance of training and the need for supervisors to be careful and circumspect when speaking to other employees in the workplace. Instead of a case establishing the postal service's clear right to terminate an employee, the case results in potential supervisory liability for retaliation under the FMLA.

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