Failure to Train Managers and Supervisors Cost Company $284,000 for Violation of the Family Medical Leave Act

By Vanessa M. Kelly / Nov 15, 2017

In *Boadi v. Center for Human Development, Inc.*, a jury found an employer liable for interfering with an employee's exercise of her Family Medical Leave Act (FMLA) rights, awarding four years of back pay and benefits. The District Court awarded additional liquidated damages, which doubled the jury's award of damages to the employee. The employer may have avoided the damages and double damages if it had only trained its supervisors, managers and human resources employees on the requirements of the FMLA.

In *Boadi*, the plaintiff was hospitalized for over a week for a mental illness. Because she was incapable of talking coherently, her son notified a number of defendant's employees, including plaintiff's supervisor, that his mother was in the hospital and could not work. Her son also called the human resources department and notified one of the human resources employees of his mother's hospitalization. The human resources employee sent him FMLA and short-term disability benefit forms. Plaintiff's supervisor discussed the plaintiff's absence with defendant's vice-president of human resources who made a notation that plaintiff was hospitalized and could not work.

Seven days after the son's first notification of plaintiff's hospitalization, plaintiff's supervisor notified the vice-president of human resources that plaintiff's absence violated the defendant's no-call policy. The vice-president of human resources drafted a letter discharging plaintiff under the defendant's policy. The discharge letter was signed by the vice president of human resources. When plaintiff informed the defendant that she could return to work, the defendant's vice-president of human resources informed plaintiff that the defendant terminated her, and she could not return to work. The vice president failed to investigate whether plaintiff's leave was protected by FMLA and failed to seek legal counsel for advice.

The jury found that the defendant violated the FMLA by interfering with plaintiff's right to take 12 weeks of unpaid leave. The jury awarded plaintiff $112,592.34 for lost wages and $29,448.90 for lost benefits for a total of $142,041.24. The judge awarded plaintiff an equal amount in liquidated damages.

A jury may award a plaintiff damages equal to the plaintiff's lost wages, salary, employment benefits, or other compensation denied or lost to the employee by the employer's violation of the FMLA. The FMLA allows a court to award liquidated damages equal to the jury damages unless the employer can show that an award of liquidated damages is unwarranted. To avoid liquidated damages, the employer must show that it acted in "good faith" and that it had "reasonable grounds" to believe its conduct was not in violation of the FMLA. To show good faith, the employer must prove that it "honestly intended to ascertain the dictates of the FMLA and act in conformance with it." Imposition of liquidated damages is the "norm" and single damages are the exception.

So what did the employer in *Boadi* do wrong, triggering a jury verdict and imposition of double (liquidated) damages? In short, it failed to present evidence of its good faith attempt to comply with the FMLA. According to the court, the defendant:

- Failed to seek legal counsel's opinion on the FMLA termination;
- Failed to consider that under appropriate circumstances, a family member may provide notice of the need to take leave;
- Failed to accept the son's notification of his mother's need for leave;
- Enforced a call-in policy without investigating the reasons for the failure to call in the absence; and
- Its managerial employees failed to communicate with each other about the context of the employee's absence and whether termination was appropriate.

Under these circumstances, the District Court concluded that the employer did not show that it acted in good faith or with a reasonable belief that its conduct complied with the FMLA. Rather, the court found the conduct was with reckless indifference to the requirements of the FMLA. After being notified of a hospitalization, at a minimum the employer had a duty to communicate with the employee's family member and inquire further. Of particular importance to the court, no FMLA training was provided to managers, or even human resources staff, and the employer did not seek legal advice about its statutory obligations. While the human resources employee provided information about short-term disability benefits, she had no appreciation that the FMLA might have also been triggered.

This case highlights the need for employers, managers and supervisors to remain educated about the company's FMLA obligations and understand the relationship between the FMLA, disability leaves, and disability accommodations. Supervisors and managers who are often the first contact with an employer about a potentially qualifying condition must understand the implications of the FMLA and the failure to meet those obligations. It also highlights the need for executive supervision of termination decisions and further scrutiny and communication about the reasons for termination. The employer can avoid these problems by training its managers and supervisors and consulting with legal counsel before terminating an employee who might qualify for FMLA leave.

If you have any questions about the decision, please contact Vanessa Kelly or another member of Clark Hill's Labor and Employment Practice Group.