

Medical Updates Served as Notice

Burnett v. LFW Inc., 7th Cir., No. 06-1013 (Dec. 26, 2006).

An employee whose detailed disclosure of his medical condition over a period of four months pointed to a potential serious health condition was entitled to a trial on his claim that his termination violated the Family and Medical Leave Act (FMLA), the 7th U.S. Circuit Court of Appeals ruled.

In 1989, The Habitat Co. hired David Burnett as a janitor. Burnett advanced to a detailer position, where he became responsible for verifying that apartment equipment and furnishings worked before a new tenant moved in. Prior to October 2003, Burnett had a solid record with Habitat.

Sergio Polo, Burnett's supervisor, then offered Burnett a transfer to a different location. Burnett told Polo that he did not wish to transfer because he had a weak bladder and the transfer position would have reduced restroom access. Burnett also told Polo that he would be examined by a doctor.

In late November, Polo issued a written warning to Burnett regarding his performance. In early December, Burnett missed a week of work due to medical tests. He presented a medical note to Polo on Dec. 11 and explained that several serious health problems had been detected that would require additional testing.

Five days later, Burnett met with Polo, other managers and his union representative to discuss his absences. Burnett told them he continued to feel sick. He compared his symptoms to the symptoms of prostate cancer. Polo granted leave for two medical appointments, but, after Burnett took the first, Polo issued a written reprimand for substandard work.

On Jan. 14, Polo issued two more reprimands, both for disruptive behavior, and opposed Burnett's request for transfer to the midnight shift. Burnett filed a grievance that day and on his union's advice did not report for work until the Jan. 26 grievance meeting. Polo suspended Burnett for three days for unexcused absences.

At the meeting, Burnett stated that he would have a biopsy the next day. Following his biopsy, Burnett provided Polo with a copy of a treatment plan instructing him to avoid strenuous activity. On Jan. 29, Burnett requested vacation until the second week of February when he was to receive the biopsy results. On Feb. 2, Habitat fired Burnett; eight days later, he was diagnosed with cancer.

Burnett sued Habitat for alleged violations of the FMLA and the Americans with Disabilities Act (ADA). The district court granted summary judgment in favor of Habitat.

On the FMLA claim, the court concluded that Burnett could not show that he had provided adequate notice to Habitat that he suffered from a serious health condition. On the ADA claim, the court concluded that at the time of termination Habitat did not know Burnett had cancer and did not have enough information to regard him as having cancer. Burnett timely appealed.

The 7th Circuit affirmed the trial court's judgment on the ADA claim, but reversed on the FMLA claim and remanded it for trial. The appeals court concluded that Burnett's remarks on Jan. 29, when considered in the context of the preceding four months, were sufficient to put Habitat on notice of his need for medical leave.

The 7th Circuit rejected Habitat's assertion that requiring an employer to look at the context of a request placed an unreasonable burden on employers.

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I. Professional Pointer

Here, the employee's statements, as reported in the opinion, should have prompted Habitat to conduct further investigation and inquiry to determine whether his situation qualified for FMLA leave. To help avoid missing these cues, employers are well-advised to provide training for supervisors and managers on recognizing and responding to potential leave and accommodation situations.