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News & Types: Employment, Labor & Benefits Update

FMLA: There Is No Such Thing as FMLA Light Duty

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Practices: Employment, Labor & Benefits

Recently, the U.S. Court of Appeals for the 7th Circuit affirmed summary judgment for the employer in a case where an employee filed suit contending that his employer failed to return him to work after the submission of various "releases" from his doctors. In essence, he argued that his employer left him on FMLA leave too long. *James v. Hyatt Regency Chicago*, No. 12-1511, (7th Cir. 2013).

Carris James ("James") was employed by the Hyatt Regency Chicago ("Hyatt") as a banquet steward. In March 2007, he was involved in an incident outside of work and was punched in the left eye which caused a retinal detachment. In April 2007, he had eye surgery and had to miss work in order to recuperate. When Hyatt learned that his absence was due to a medial reason, it provided him with FMLA paperwork. On April 24, 2007, James provided Hyatt with a note from his doctor stating that he could return to "light duty" work on May 10, 2007. The note did not list any specific restrictions, nor did it provide any duration for the "light duty" requirement. Hyatt did not return him to light duty. The next day, he requested FMLA leave and Hyatt granted his request applying it retroactively to cover his absence prior to the submission of his certification paperwork. On May 11, 2007, he submitted an FMLA certification form which stated that he required continued FMLA leave because he was unable to return to work in any capacity. Although his 12 weeks of FMLA leave entitlement ended on July 13, 2007, the collective bargaining agreement entitled him to remain on FMLA leave for up to one year from his original submission date.

On August 2, 2007 and September 25, 2007, he submitted additional notes from his doctor. Hyatt attempted to contact James in September and December 2007 to seek additional information about the specifics of his restrictions and the conflicting paperwork that he had been submitting. In January 2008, Hyatt reached out directly to his doctor for a clarification of his condition. On February 17, 2008, James returned to work in the same position, shift and seniority level as before his leave of absence. Notwithstanding his return to work, he filed suit in 2009, alleging interference and retaliation under the FMLA and discrimination and retaliation under the ADA. The district court granted summary judgment in favor of Hyatt and James appealed.

On appeal, James argued that Hyatt interfered with his FMLA rights when it did not reinstate him to his steward position after he provided the April 24, 2007 doctor's note that released him to light duty starting on May, 11, 2007. The Court disagreed. Noting that James' April 24, 2007 note did not release him to return to work in any capacity until May 10, 2007, the Court could not understand how Hyatt could have interfered with his FMLA rights on April 24, 2007, when he wasn't even released to work until May 10, 2007. Second, the note only

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permitted him to return to "light duty" beginning on May 11, 2007 and did not provide any duration for this "light duty" requirement.

In affirming the grant of summary judgment, the 7th Circuit noted that the FMLA requires an employer to restore an employee to the position he/she held at the time the FMLA leave began or an equivalent position with equivalent employment benefits, pay and other terms and conditions of employment. However, under the FMLA, an employer is not required to return an employee to his or her position, if he or she cannot perform the essential functions of the job. As the court stated, *"there is no such thing as "FMLA Light Duty."*

With regards to his ADA failure to accommodate claim, the Court indicated that because James was simultaneously submitting conditional releases, along with paperwork that he was incapable of returning to work, he could not establish that Hyatt failed to accommodate him. Moreover, because one of the releases that he submitted restricted him from performing two essential functions of his position (lifting and bending); the Court found that this would not be considered a reasonable accommodation because it would "equate, essentially to reassignment of the job itself." Should you have any questions about FMLA leave or ADA requirements, please contact a member of the Employment, Labor and Benefits Practice Group.

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