

PUBLICATION

Sixth Circuit Reminds Employers of Notice Requirement Under the FMLA

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The United States Court of Appeals for the Sixth Circuit recently upheld a ruling that FedEx interfered with a former employee's rights under the Family and Medical Leave Act (FMLA) by failing to give her adequate notice of the consequences of not submitting her medical certification forms. In *Wallace v. FedEx Corp.*, No. 11-5500, 2014 WL 4116484 (6th Cir. Aug. 22, 2014), the Sixth Circuit reinstated the jury's \$173,000 back-pay award for former employee Tina Wallace.

Wallace worked for FedEx for 21 years in a variety of positions, most recently as a senior paralegal. By 2007, Wallace had developed various physical and mental health problems. Despite numerous warnings from her supervisor, Wallace was consistently late to work due to her health problems. In mid-August, while at a meeting with her supervisor and an attorney from FedEx's Labor and Employment Group, Wallace presented a note from her doctor that recommended she be off work for two weeks due to her medical condition and then get reassessed. The supervisor gave Wallace several FMLA forms, and the attorney told Wallace that FedEx needed to have the forms back within 15 days. However, no one told Wallace what would happen if she did not return the forms.

Following the meeting, Wallace's doctor completed the FMLA forms, but Wallace never returned the forms to FedEx. Wallace then failed to report to work after her initial two weeks of leave ended. After Wallace missed two consecutive workdays without notifying a manager, FedEx fired Wallace for violating its attendance policy.

Wallace filed suit against FedEx alleging the company violated the FMLA by terminating her employment. The magistrate judge dismissed Wallace's requests for liquidated damages and front-pay, but after a trial the jury found in Wallace's favor on the issues of liability and back-pay, awarding damages in the amount of \$173,000. Following the verdict, the magistrate judge granted FedEx's motion for remittitur and reduced the damages award to \$90,788. Both parties appealed.

The FMLA prohibits an employer from interfering with, restraining or denying the exercise of, or the attempt to exercise, any right provided under the FMLA. But if the employer can show it had a legitimate reason unrelated to the exercise of FMLA rights for engaging in the challenged conduct, no FMLA violation exists.

FedEx raised several legal arguments challenging its liability, including that Wallace did not provide notice of her intention to take FMLA leave beyond the initial two weeks. The FMLA requires an employee to provide notice and a qualifying reason for requesting the leave. However, the Sixth Circuit stated that FedEx largely missed the point of this notice element and that the relevant question is whether Wallace provided FedEx with notice that she needed FMLA leave, not whether she provided notice that she needed a certain *amount* of FMLA leave. Given that Wallace provided her supervisor a doctor's note and the supervisor gave Wallace FMLA paperwork in return, the Sixth Circuit held that a reasonable juror could conclude that Wallace had provided FedEx with sufficient notice.

Additionally, the Sixth Circuit rejected FedEx's argument that it did not interfere with Wallace's rights under the FMLA because her failure to return the medical certification forms meant that she was not eligible for leave under the statute. The FMLA regulations allow an employer to request in writing that an employee provide medical certification within 15 days. If the employee fails to return the completed certification to the employer,

the employer may delay or completely deny the employee's FMLA leave. However, to impose these sanctions, at the time the employer requests certification the employer must also advise the employee of the anticipated consequences of the employee's failure to provide adequate certification.

The jury found that FedEx failed to instruct Wallace of the consequences of not producing the certification paperwork, which rendered FedEx liable for interfering with Wallace's FMLA rights. Had FedEx complied with the regulation, Wallace would have submitted the forms. The Sixth Circuit rejected FedEx's argument that this regulation is arbitrary or capricious.

Further, the Sixth Circuit rejected FedEx's contention that it fired Wallace for a legitimate reason – failing to comply with the company's attendance policy – which was independent of her FMLA leave. The Sixth Circuit concluded that Wallace's failure to report for work and her subsequent termination were a direct result of failing to perfect her FMLA leave, which was a consequence of FedEx failing to meet its responsibilities under the applicable regulation. FedEx's purported legitimate reason was intimately intertwined with the FMLA leave. Finally, the Sixth Circuit held that a reasonable jury would be justified in finding that Wallace was prejudiced by FedEx's failure to comply with the applicable regulation.

Thus, the Sixth Circuit rejected FedEx's cross-appeal in full and affirmed the magistrate's denial of FedEx's motions for judgment as a matter of law. Additionally, because the magistrate judge erred by granting remittitur without offering Wallace the option of a new trial on the issue of back-pay damages and by re-weighting the evidence, the Sixth Circuit reinstated the \$173,000 jury award.

This opinion reinforces an employer's obligations after an employee provides notice of the need for FMLA leave. In FMLA situations, employers should provide written notice of their expectations and the anticipated consequences of an employee's failure to follow them.