

PUBLICATION

Gender Discrimination in FMLA Claims

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November 30, 2012

In the pending case of *Ayanna v. Dechert, LLP* filed in the United States District Court of Massachusetts, Plaintiff Ariel Ayanna ("Ayanna") sued his employer for retaliation under the Family Medical Leave Act ("FMLA") and sex discrimination, alleging that the company's "macho culture" looked down on fathers who take paternity leave.

Ayanna worked as an associate attorney at the Boston law firm of Dechert, LLP. After his second child was born, he took four weeks of paid paternity leave under the FMLA to bond with his child and take care of his wife. After returning to work, Ayanna alleges that the firm retaliated against him for taking FMLA leave by withholding work assignments, thus decreasing his billable hours for the year and, ultimately, terminating him on the ground that his billable hours were too low. Ayanna also alleges that his boss mocked him for his "care-taking ways." The firm terminated Ayanna four months later based on a "fair" performance rating and "personal issues."

The defendant law firm filed a motion for summary judgment in an attempt to dismiss Ayanna's claims for FMLA retaliation and sex discrimination. While the Court dismissed Ayanna's claim for gender discrimination, the Court sent Ayanna's FMLA claim to a jury trial. The Court noted in its Opinion that a reasonable jury could find that the reason provided for Ayanna's termination, ("personal issues"), was directed at Ayanna's recent paternity leave under the FMLA. Further, the Court noted that there remains a factual dispute as to whether Ayanna's hours were low because the firm purposely withheld work from him in retaliation for taking FMLA leave.

The case of *Ayanna v. Dechert, LLP* serves to remind employers that both the mother and father are entitled to FMLA leave to care for their newborn. Employers must ensure that their supervisors and managers understand that it is unlawful to retaliate against men who take leave to care for their children or they could face liability under the FMLA.