



Court Recognizes An Employer's Right To Terminate Employee On Leave

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Under the Family and Medical Leave Act ("FMLA"), an employer with 50 or more workers, which covers roughly half of the workforce in the United States, must provide 12 weeks of "protected" leave to certain employees suffering from a serious health condition, or whose family member suffers from a serious health condition. Employers have long been plagued with difficult leave questions. For example, can you terminate an employee, while on leave, for legitimate business reasons unrelated to the leave, without running afoul of the FMLA? The Federal Eighth Circuit Court of Appeals, which includes Minnesota, has recently offered some needed guidance for employers.

In *Throneberry v. McGehee Desha County Hospital*, the Court held that "The FMLA simply does not force an employer to retain an employee on FMLA leave when the employer would not have retained the employee had the employee not been on FMLA leave." Following a series of personal problems, which included plunging into a deep depression and nervous breakdown, Throneberry, a registered nurse, began missing work, leaving work to visit a casino, and failing to read important mail and completing her work. The hospital suggested that she take a month-long leave of absence to deal with her problems. Throneberry agreed to take the leave to address her health condition. While she was on leave, Throneberry's co-workers reported that she still showed-up at work acting inappropriately, disrupting the work place, and was seemingly over-medicated. On one occasion, Throneberry's family had to be called to remove her from the hospital.

When the hospital asked Throneberry to resign, she eventually did so, but later indicated that had she known she was eligible for FMLA leave, she would have continued her medical leave. Throneberry filed a lawsuit against the hospital. The Court supported the employer's position, finding that courts need to recognize the legitimate needs of employers and that a strict liability standard, which would require that an employer not dismiss an employee who would otherwise

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be dismissed, even for misconduct, if the employee is on leave, was not appropriate. In short, the court found that an employee on FMLA has no greater rights than the employee would have enjoyed had he/she not taken FMLA leave.

The Court ruling clarifies an employer's right to consistently apply its policies to all employees, regardless of leave status. However, employers must proceed with caution. Terminating or disciplining an employee on leave is always a difficult proposition which raises the risk of a retaliation claim. Such terminations must be implemented with caution and advice of counsel to assure that a careful record of the non-leave related reasons for the decision is established.

Are Your Employee Handbook And Employment Documents Protecting Your Firm Or Putting You At Risk?

If your Company's employee policy handbook, hiring and discipline materials, drug and alcohol testing policies, or other critical labor or employment documents or policies are more than 2 years old (or non-existent), your Company is at risk. Call (952-896-1700) or fax (952-896-1704) us if you are interested in a complimentary review of your materials and information on our cost-effective "fixed fee" program to customize and update these materials for your Company. The cost is \$775.00 for handbook and employment materials (with 2 hours customizing time included) and \$375.00 for drug and alcohol testing policy and materials (with 1 hour customizing time included).

NEW STATE MINIMUM WAGE RATES

AS OF AUGUST 1, 2005, THE STATE OF MINNESOTA WILL HAVE NEW MINIMUM WAGE RATES.

- LARGE EMPLOYERS WILL BE REQUIRED TO PAY EMPLOYEES \$6.15 PER HOUR.
 - A "LARGE EMPLOYER" IS DEFINED AS ANY ENTERPRISE WHOSE ANNUAL GROSS SALES VOLUME IS NOT LESS THAN \$625,000.

- A SMALL EMPLOYER WILL BE REQUIRED TO PAY EMPLOYEES \$5.25 PER HOUR.
 - A "SMALL EMPLOYER" IS DEFINED AS ANY ENTERPRISE WHOSE ANNUAL GROSS SALES VOLUME IS LESS THAN \$625,000.

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