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“Quitter’s Remorse”: FMLA and ADA Implications when an Employee Reneges on a Resignation

By Jeffrey R. Townsend

Employers are generally aware of protections afforded to employees under FMLA and ADA regulations. Not only do the regulations protect employees against actions of employers, but may also protect the employee against himself. The following real life case handled by our firm demonstrates the application and relevance of FMLA and ADA regulations where an employee wanted to revoke a resignation.

In this particular case, employee John Smith (fictitious name) began working for a large corporate employer in 1999 and became a mid-level manager in 2002. In 2004, Smith was involved in a particularly lengthy and significant project at work. Smith was under a lot of stress to complete the project in a timely and thorough manner. During the course of the project, Smith began seeing a physician to help him deal with his job-related stress. Smith informed his supervisors that he was taking medication to deal with the stress. As the project got closer to its completion deadline, Smith began exhibiting irrational and uncharacteristic behavior.

Smith’s co-workers approached his supervisors and informed them that Smith was displaying signs of stress and was micromanaging a key project to the point of interfering with the co-workers’ ability to perform their job functions. Smith’s supervisors then spoke to Smith and directed him to stop micromanaging the project and to focus on the overall management of his division.

Despite the direction of his supervisors, Smith continued to be excessively “hands on” in the details of the project to the point of hindering completion of the project. Smith also continued to behave emotionally and erratically.

Concerned about Smith’s behavior and health, the supervisors met with Smith and directed him to have no further involvement with the project. Smith became visibly frustrated and upset, and would not focus on the conversation. He ended the meeting abruptly by stating he had an appointment and his carpool was waiting on him.

Smith’s conduct was so out of character that the supervisors decided that it would be in Smith’s best interest to take a day off from work to decompress. The supervisors called Smith at home, told him they were concerned about his stress levels, that the project was under control, and that he should take the next day off from work to rest.

Contrary to the express direction of his supervisors, Smith did in fact show up to work the following morning. He called a meeting of his subordinates and began berating them for their performance on the

project. As soon as the supervisors became aware that Smith had shown up to work, they called him to their offices for a meeting.

The supervisors informed Smith that they were concerned about his conduct, and that they had arranged for him to be seen for a fitness-for-duty evaluation. As Smith and his supervisors were walking to the physician's office, Smith abruptly removed his identification badge and angrily tossed it to a supervisor. He said that he was not going to go through with the fitness-for-duty evaluation, and stated, "I quit." Smith then left the premises.

Two days later, after not hearing from Smith, the Human Resource Director and supervisors met with corporate counsel and agreed the company would accept Smith's resignation. Later that day, the Human Resource Director and a supervisor left a message with Smith informing him that the company had accepted his resignation. They also sent him a letter indicating they had accepted his resignation.

Minutes after the Human Resource Director left a message for Smith that the company was accepting his resignation, Smith was on the phone with his co-workers and other managers and supervisors, indicating that he had been under a lot of stress, had recently had his medications adjusted, that he made a mistake in quitting, and that he would like to come back to work. He asked if there was anything he could do, or they could for him, to get his job back.

His friends intervened on his behalf and took the issue to the company's vice-president who suggested Smith undergo the fitness-for-duty evaluation to determine if it would be appropriate to allow Smith to return to work in a different department.

Approximately one week after quitting, Smith attended the fitness-for-duty evaluation which was conducted by the company psychologist. Following the evaluation, the company convened an advisory group consisting of Smith's supervisor, the Human Resource Director, corporate counsel, the Employee Services Director, and the psychologist who conducted the evaluation. The advisory group decided that Smith's conduct was not appropriate for a manager and that bringing him back would not resolve the issues that resulted in Smith tendering his resignation. The advisory group confirmed the prior decision to accept Smith's resignation, but left the door open for Smith to apply for other open positions in the future.

The Lawsuit

Before filing suit, Smith submitted a charge of discrimination to the Idaho Human Rights Commission. The Commission found that Smith quit his job and that no discrimination was involved. Subsequently, Smith filed a lawsuit against the employer, alleging nine separate claims, including wrongful discharge under Idaho state law, and violations of multiple provisions of the American's with Disabilities Act ("ADA") and the Family Medical Leave Act ("FMLA"). The crux of Smith's case was that the employer terminated him because of a health condition and because of private information he provided to the company psychologist during the fitness-for-duty evaluation, which information was shared with the advisory group.

Hall, Farley, Oberrecht & Blanton was retained to defend the employer and was ultimately successful in convincing the Court to dismiss the entire case against the employer and the individual defendants. The lawsuit, however, highlighted various legal and HR aspects of the ADA and FMLA. It also suggests the importance of having a standardized policy of dealing with employees who quit, and then want to return, particularly employees who claim their resignation was not voluntary due to a medical condition.

Lessons to Learn

An employer has an obligation to inform employees of FMLA rights if they are aware the employee has a medical condition that prohibits him from performing the functions of his job.

Under FMLA, a qualified employee is entitled to 12 weeks of leave for treatment of a serious health condition. Stress **can** be a serious health condition under FMLA regulations if the stress renders the employee unable to perform one or more of the essential functions of his job. Employers may also have an obligation to advise an employee of his FMLA rights, and consider any absence part of FMLA leave, if the employer is actually aware that the employee has a serious health condition.

In this case, the employer was aware that Smith was exhibiting signs of stress, was taking medication for stress, and was acting out of character. The employer even went so far as to direct Smith to take a day off work – a possible indication the employer felt the stress was interfering with his ability to perform his job.

In deciding to accept Smith's resignation, the employer did not consider Smith's absence following his resignation as FMLA leave, or consider whether Smith had a serious health condition entitling him to leave. Smith alleged that the employer should have placed him on FMLA leave and/or should have considered his absence following his resignation as FMLA leave.

If Smith had been able to prove he had a "serious health condition" at the time he resigned, he may have prevailed on his FMLA claim. However, Smith's allegations that his resignation was the result of his stress, was contradicted by his medical records. Approximately one week before tendering his resignation, Smith had been seen by his physician for a prescription refill and adjustment. The physician noted that Smith was able to work and did not need to limit the time, type, or location of his work. Smith could not provide any medical testimony that he was unable to perform the functions of his job at the time he resigned.

Employers need to be aware that FMLA may provide an employee relief from his own resignation if the employee can establish the resignation was tendered because of a serious health condition. In deciding whether or not to accept the resignation, the employer should consider whether the employee may be tendering the resignation as a means of dealing with such a condition. If so, the employer should consider offering the employee leave under FMLA as an alternative to resignation.

ADA and Privacy Rights

The ADA generally prohibits employers from making inquiries to determine whether an employee, or applicant, has a disability. A few exceptions are made, including exceptions for fitness-for-duty examinations that are "job related" and "consistent with a business necessity." In situations where medical inquiries are permitted, such information must be maintained in confidence and only disclosed to supervisors or managers as necessary for job accommodations.

In this case, the fitness-for-duty evaluation was warranted. An employer may request a fitness-for-duty evaluation if the employee manifests even slight signs of agitated or abnormal behavior. The employer was, therefore, well within its rights in requesting the evaluation of Smith.

However, in this case the company was deciding whether to allow an employee to rescind a resignation. It is debatable whether such a consideration would be considered an “accommodation” under ADA. The employer was walking a fine line in having the employee evaluated by a company psychologist who subsequently sat in on an advisory committee making decisions on whether or not to allow Smith to continue working for the company.

If an employer has a right to conduct a fitness-for-duty evaluation, it is important to get the necessary information from the physician to the individuals making the employment decisions. However, the employer must be aware of the ADA privacy protections and disclose only the minimum information necessary for managers to consider what accommodations, if any, can be made.

In this case, the psychologist disclosed only his general impressions of Smith. He did not disclose Smith’s medical condition or history. The Court agreed that the information disclosed did not fall within the category of information protected by the ADA.

Any physician who conducts a fitness-for-duty evaluation, and any employer who receives information from such an evaluation, needs to be aware of the ADA regulations regarding the maintenance and disclosure of such information to avoid potential regulatory violations.