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Glickman v. Phoenix Cycles, Inc.

February 2007

Family and Medical Leave Act
29 U.S.C. § 2601 *et seq*.

§ 2612. Leave requirement

(a) In general.

(1) Entitlement to leave. An eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period for one or more of the following:

(A) Because of the birth of a son or daughter of the employee and in order to care for such son or daughter.

(B) Because of the placement of a son or daughter with the employee for adoption or foster care.

* * * *

(D) Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.

* * * *

§ 2614. Employment and benefits protection

(a) Restoration to position.

(1) In general. Except as provided in subsection (b), any eligible employee who takes leave under this Act . . . shall be entitled, on return from such leave—

(A) to be restored by the employer to the position of employment held by the employee when the leave commenced; or

(B) to be restored to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(2) Loss of benefits. The taking of leave . . . shall not result in the loss of any employment benefit accrued prior to the date on which the leave commenced.

(3) Limitations. Nothing in this section shall be construed to entitle any restored employee to—

(A) the accrual of any seniority or employment benefits during any period of leave; or

(B) any right, benefit, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave.

* * * *

(b) Exemption concerning certain highly compensated employees.

(1) Denial of restoration. An employer may deny restoration under subsection (a) to any eligible employee . . . if—

(A) such denial is necessary to prevent substantial and grievous economic injury to the operations of the employer; [and]

(B) the employer notifies the employee of the intent of the employer to deny restoration on such basis at the time the employer determines that such injury would occur . . . .

* * * *

(2) Affected employees. An eligible employee described in paragraph (1) is a salaried eligible employee who is among the highest paid 10 percent of the employees employed by the employer. . . .

§ 2615. Prohibited acts

(a) Interference with rights.

(1) Exercise of rights. It shall be unlawful for any employer to interfere with, restrain, or deny the exercise of or the attempt to exercise, any right provided under this Act.

* * * *

§ 2617. Enforcement

(a) Civil action by employees.

(1) Liability. Any employer who violates this Act shall be liable to any eligible employee affected [for damages equal to the amount of]—

(i) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; [and]

* * * *

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) . . . and . . . such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

* * * *

Ridley v. Santacroce General Hospital

United States Court of Appeals (15th Cir. 2001)

At issue is whether Santacroce General Hospital (SGH) violated the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 *et seq.*, when it failed to restore Lena Ridley to her former position upon her return from maternity leave and later terminated her employment. The district court granted summary judgment to SGH, and Ridley appeals.

Ridley worked full time as nursing supervisor of SGH's surgical unit. In March 1996, Ridley began 12 weeks of paid FMLA leave for her son's birth. When she returned to work, her salary and benefits were unchanged but she was now scheduled for the evening shift every two weeks. Pre-leave, Ridley worked days only. Further, her duties as nursing supervisor had now been split between two other nurses. When she complained about the evening shifts and reduction in responsibilities, SGH offered to transfer her to pediatrics or to a per diem home health nurse position. Ridley declined the transfer to pediatrics, as there was no guarantee of a day shift and it was not a supervisory position. She also rejected the home health nurse job, because while her hourly wage would be higher, her health insurance costs would increase.

One month after her return from leave, SGH notified Ridley that, due to falling patient admissions, staffing levels were being cut and Ridley's surgical unit position was being eliminated. SGH informed Ridley that at this time the only nursing position available was for a home health nurse. For a second time, Ridley refused this option and her position at SGH was terminated. A month after her job at SGH ended, she found work at Valley View Medical Center.

Ridley filed this action alleging that SGH violated her rights under the FMLA. She is seeking reinstatement to her position as nursing supervisor of the surgical unit or its equivalent, and damages for lost wages and benefits.

The district court held that SGH had complied with the FMLA and that Ridley had not brought forth evidence to dispute SGH's claim that the changes in her position and its subsequent elimination were caused by anything other than legitimate business reasons.

The FMLA entitles an eligible employee to up to 12 weeks of leave for the birth of a child. To make out a prima facie claim for a violation of FMLA rights, a plaintiff must establish that (1) she was entitled to FMLA leave; (2) she suffered an adverse employment decision; and (3) there was a causal connection between the employee's FMLA leave and the adverse employment action. An employer who interferes with FMLA rights is liable for damages and/or appropriate

equitable relief. *See* 29 U.S.C. § 2617(a)(1). The amount of lost wages or other monetary losses may be doubled (the additional portion called "liquidated damages") unless the employer can prove that the violation was in good faith and that it reasonably believed that the act or omission did not violate the FMLA. While there is a strong presumption in favor of liquidated damages, the FMLA does not authorize punitive damages.

Ridley's eligibility for FMLA leave is not disputed. At issue are whether SGH restored Ridley to her pre-leave employment (or its equivalent) and whether any changes to her position were due to legitimate business reasons.

An equivalent position is one that is equal or substantially similar in the conditions of employment. *See* § 2614(a)(1)(B). The fact-finder considers whether the duties and essential functions of the new position are materially different from the pre-leave position. If the undisputed facts show that, as a matter of law, the employer offered the employee an equivalent position upon her return, summary judgment in favor of the employer is appropriate.

To be equivalent, an employee's new position must be virtually identical to the employee's former position in terms of pay, benefits, and working conditions, including privileges, perquisites, and status. It must involve the same or substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility, and authority. It must also have similar opportunities for promotion and salary increase. For example, there was no FMLA violation in *Mills v. Telco, Inc.* (15th Cir. 1998) where the employee returning from FMLA leave was given a new position not involving statewide travel as in her pre-leave auditing position, but rather auditing from a central office. Apart from the travel, the nature of the work and the pay and benefits remained the same.

That Ridley was not restored to her pre-leave position is not seriously questioned. While SGH argues that Ridley's salary remained the same, SGH concedes that eliminating her duties as a supervisor rendered her a manager in name only. The terms of her employment also changed when, after her leave, Ridley was scheduled for evening shifts. These changes, notably removing her managerial duties, were not *de minimis*, but, in contrast to the facts in *Mills*, affected the essential functions of Ridley's pre-leave employment. Nor were the other jobs SGH offered Ridley equivalent in status and duties to her previous position.

SGH asserts that the changes in Ridley's employment were necessitated by legitimate business reasons. The FMLA does not give an employee an absolute right to reinstatement. It does not confer "any right, benefit, or position of employment other than

any right, benefit, or position to which the employee would have been entitled had the employee not taken the leave." 29 U.S.C. § 2614(a)(3)(B). Thus, if, as SGH claims here, Ridley's employment was already slated for reduced hours or termination for legitimate business reasons, it has not violated the Act because the adverse employment action was not causally connected to the employee's taking FMLA leave. *See, e.g., Floyd v. Cullen Mfg*. (15th Cir. 1995) (no violation of FMLA where one month after returning from leave, employee was fired for excessive tardiness and insubordination). Alternatively, an employer is not required to reinstate an employee who has exceeded the amount of leave permitted under the statute.

Here, SGH relied on testimony from its human resources manager, Ann Levine, who stated that SGH's accounting office projected lower patient admissions for the second half of 1996 and that such projections required the staff reduction in Ridley's unit. Levine noted that Ridley was not the most senior nurse in her unit and that SGH had been working on staff restructuring prior to Ridley's leave.

SGH, however, does not dispute the fact that Ridley was the only surgical staff member in six years to take a full 12 weeks of maternity leave. Nor does it dispute that hers was the only nursing position eliminated among all of SGH's medical departments. SGH also concedes that six months after Ridley's termination, the surgical unit resumed previous staffing levels.

The relatively brief interval between Ridley's return from leave and her termination is problematic, as is the fact that she was the only member of the surgical unit to use the full amount of maternity leave in several years. Most telling, SGH does not dispute that it returned to full staffing levels a few months after it eliminated Ridley's position. Thus, summary judgment in favor of SGH on Ridley's FMLA claims was improper as there is a genuine issue of material fact regarding whether SGH's actions were the result of a legitimate business decision and not in response to Ridley's having taken 12 weeks of FMLA leave.

Reversed and remanded.

Jones v. Oakton School District

United States Court of Appeals (15th Cir. 2004)

This case arises from plaintiff Greg Jones's use of Family and Medical Leave Act (FMLA) leave. Jones, an employee of the defendant Oakton School District, appeals from the lower court's ruling that the district could lawfully refuse to reinstate him under the FMLA.

Jones worked for the district as principal of Taft Elementary School. In March 2002, Jones requested, and was granted, 12 weeks of FMLA leave for back surgery. This meant that Jones would be absent during budget planning for the next school year as well as during the preparation period for a new test required by Franklin law, the Elementary Skills Assessment. Eligibility for certain educational grants depended upon how Taft students performed on the assessment.

Concerned that Jones would be unavailable during this time, the district hired Anne Rios to take over as principal at Taft. Rios, an experienced school administrator, would not fill the position on a temporary basis, so the district hired her as a permanent replacement for Jones. Further, because Taft had had substantial staff turnover in the preceding two years, the district decided that a permanent replacement was preferable to an interim principal.

In late May, Jones asked to return to work, but the district refused to dismiss Rios. Nor did it offer Jones employment as principal of another school, as all such positions were filled. Jones then commenced this action against the district.

Jones's right to take 12 weeks of FMLA leave for his serious medical condition is not contested. The question is whether the district may deny restoration to Jones under the FMLA's exception for highly compensated employees, 29 U.S.C. § 2614(b). If an employer can show that reinstatement of the employee would result in "substantial and grievous economic injury," the FMLA permits an employer to elect not to reinstate that employee. We note that the requisite economic injury is not that caused by the employee's *absence*, but the injury that will result from *restoring* the employee to his prior position or its equivalent. It is not disputed here that Jones received the required notice under § 2614(b)(1)(B).

Jones argues that the district failed to meet the "substantial and grievous" standard as a matter of law. We disagree.

There is no precise test that identifies the extent of economic injury that an employer must show to take advantage of the FMLA's

key employee exception. The pertinent regulation defines "substantial and grievous economic injury" as follows:

> If the reinstatement of a "key employee" threatens the economic viability of the employer, that would constitute "substantial and grievous economic injury." A lesser injury which causes substantial, long-term economic injury would also be sufficient. Minor inconveniences and costs that the employer would experience in the normal course of doing business would certainly not constitute "substantial and grievous economic injury." 29 C.F.R. § 825.218(c).

When assessing economic impact, the employer may consider the cost of reinstating the employee to an equivalent position if hiring a permanent replacement for the employee on leave was unavoidable. *Id*.

Here, the district had no reasonable alternative but to hire a permanent replacement for Jones. Restoring Jones to his prior position would require the district to breach its employment contract with Rios. Further, we are satisfied that placing Jones in a position equivalent to school principal would create substantial economic hardship.

Jones is among the highest paid 10 percent of the district's salaried employees. The district provided ample evidence that there were no funds available to pay for another position. Indeed, part of the budget planning that occurred during Jones's leave involved selecting programs to cut in the face of declining tax revenue and increasing enrollments. Because of the district's financial constraints, restoring Jones after contracting with Rios would create more than a minor inconvenience—the added stress of his salary would force cuts in other areas and the repercussions would be felt for years to come. As a public entity, the district cannot raise its prices to make up for the shortfall. We conclude that, as a matter of law, the district met the threshold for "substantial and grievous economic injury," and that therefore Jones's FMLA rights were not violated.

Affirmed.