

Third Circuit adopts the “honest belief” defense to FMLA retaliation claims and confirms that FMLA leave requests can double as requests for reasonable accommodations under the ADA.

Articles February 6, 2017

The Third Circuit's recent decision in *Capps v. Mondelez Global, LLC*, (<http://www2.ca3.uscourts.gov/opinarch/153839p.pdf>) is a mixed bag for employers. The good news is that it establishes that an employer's honest belief that its employee misused FMLA leave can defeat a retaliation claim, even if that belief turns out to be wrong. The decision, however, increases the burden on employers in determining how best to respond to leave requests because the court also held that an employee's request for intermittent leave under the FMLA could also serve as a request for a reasonable accommodation under the Americans with Disabilities Act (ADA).

What happened?

Capps was a long-term employee for Mondelez and suffered from a degenerative disorder that required intermittent FMLA leave when flare-ups occurred. Capps took and was recertified for FMLA leave on numerous occasions throughout his employment. Each time he returned to the same job with the same benefits.

Capps went to a local pub on one day while he was off on intermittent FMLA leave and got extremely intoxicated (four times the legal limit). He was later arrested for DUI and pled guilty to the charges — all of which his employer discovered through the local newspaper. Mondelez conducted an investigation which revealed that several dates on which Capps had previously taken intermittent FMLA leave coincided with his “court dates” in the DUI case. Believing that Capps had abused the FMLA, Mondelez fired him.

Capps claimed it was all a misunderstanding and sued Mondelez in federal court. The Third Circuit dismissed all of Capps' claims and, in the process, answered yes to two questions facing employers.

■ ***Can an employer's honest belief that an employee abused the FMLA defeat a retaliation claim?***

Capps' main argument in the case was that Mondelez fired him in retaliation for taking FMLA leave. The Third Circuit disagreed because the evidence showed that Capps was discharged not for taking FMLA leave, but because Mondelez believed he dishonestly took FMLA leave.

“[T]he undisputed evidence indicates that when [Mondelez] reviewed the criminal court docket related to Capps' DUI case, the docket reflected that the arrest date and “court dates” appeared to coincide with dates on which Capps had taken FMLA leave. Although Capps argued that Mondelez was mistaken in its belief that Capps misused his leave or was otherwise dishonest with regard to the leave taken, there is a lack of evidence indicating that Mondelez did not honestly hold that belief.”

The court reached this conclusion because a retaliation claim requires proof that an employer had retaliatory intent. But ascertaining an employer's intent does not involve considerations about the ultimate correctness of the employer's determination. It has to do with whether the employer honestly believed the reasons it offered for the termination. In other words, employers can discharge employees who they truly believe misused/abused FMLA leave — even if that belief turns out to be wrong.

■ ***Can a request for intermittent FMLA leave also constitute a request for a reasonable accommodation under the ADA?***

Capps also alleged that Mondelez's actions violated the ADA because his request for FMLA leave doubled as a request for a reasonable accommodation under the ADA. While the court agreed that a request for FMLA leave *could* also count as a request for a reasonable accommodation under the right circumstances, it nevertheless dismissed Capps' claim because he had not actually been denied anything. Mondelez had provided him with all the leave he requested.

Employer Takeaways:

- While the Third Circuit's adoption of the "honest belief" defense is a win for employers, companies should be mindful that this defense is a fact-specific one, meaning that employers should have evidence to back up their belief before terminating an employee.
- The court's determination that a request for intermittent FMLA leave can double as a request for an accommodation under the ADA is significant for employers because they may need to think about ways to accommodate the employee in addition to simply providing the leave required by the FMLA.

If you have any questions about compliance with the FMLA, ADA, or any other laws affecting the workplace, please contact Jeremy Farrell or 412-594-3398.

NOTE: This is the second employment-related opinion that the Third Circuit issued in the past few weeks. The first addressed whether a facially neutral workplace policy that disproportionately impacted workers older than 50 constituted age discrimination even if it did not disproportionately affect employees in their 40s. For more information about that case, check out the following link: <http://www.tuckerlaw.com/2017/01/23/third-circuit-rules-employment-practices-favoring-employees-40s-50s-constitute-age-discrimination/>.