

Burger King Franchisee Case Offers FMLA Reminders

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On June 3, 2019, a judge for the United States District Court for the Southern District of Alabama ruled that a Burger King Corp. franchisee restaurant unlawfully interfered with an employee's rights under the Family and Medical Leave Act.

In coming to this conclusion, U.S. District Judge William H. Steele noted that the employer was at fault for the employee's failure to follow its FMLA protocol and that the employer itself failed to follow its own policies. The case highlights the crucial importance of educating all employees — management personnel included — on the requirements of the FMLA and any applicable policies the employer may have regarding notice for requesting FMLA leave.



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Background Facts

Plaintiff LaShondra Moore was employed at a Burger King restaurant in Mobile, Alabama. The defendant, GPS Hospitality Partners IV LLC, acquired 190 Burger King restaurants in December 2016, including the one at which Moore worked.

On Friday, Feb. 3, 2017, Moore received a call from her mother's doctor, advising her that Moore's mother had contracted a serious infection that would require both hospitalization and surgery. That weekend, her mother was abruptly hospitalized, and her surgery was set for the following Monday. While working her Saturday shift, Moore informed her store manager, Chanavia Owes, that Moore's mother was in a life-or-death situation that required surgery. After informing Owes that she needed a week off to be with her ailing mother, Owes told Moore to take all the time she needed.

However, Owes' reassuring accommodation proved hollow. Owes requested that Moore show up to work multiple times throughout the week and issued Moore a disciplinary notice for her tardiness on Tuesday morning. Following miscommunication regarding Moore's scheduled Wednesday shift, Owes issued her a final written warning after she failed to show up for work.

It was not until Wednesday, Feb. 8, that Moore learned from her aunt about her rights under FMLA to take leave from work to care for her mother. That same day, she informed both Owes and district manager Sheila Morrissette that she needed to file for FMLA leave.

Moore provided Morrissette with a note from her mother's doctor describing her mother's ill health. Moore asked Morrissette frequently about what she needed to do to obtain FMLA leave, but Morrissette never informed Moore that she was required to call human resources. After continued inquiry from Moore, Morrissette finally responded with a message containing nothing more than a human resource employee's email address. Due to the lack of further context, explanation or accompanying instruction, Moore did not know what to do with this information.

By the next Monday, Feb. 13, — just over a week after first requesting leave to care for her mother — Moore's employment was terminated following further disagreements about work attendance.

Defendant's FMLA Policies

Under the defendant's FMLA policy, employees were required to give notice to both their supervisor and to human resources in the event they needed to take FMLA leave. This policy was stated in defendant's employee handbook. The defendant also maintained a two-and-a-half page FMLA policy. Defendant also had a policy that required managers who received notice of a potentially FMLA-qualifying need for leave to tell the employee to contact human resources.

The defendant pointed to Moore's failure to comply with the FMLA policy by not contacting anyone in human resources in defending its case. However, the court noted the "particularly bad set of facts" defendant offered with respect to Moore's failure to follow the FMLA notice policy.

In November 2016, during the process of acquiring the 190 restaurants, defendant required its new employees to complete and/or sign a number of documents online, including its 31-page employee handbook. Employees were asked to read and sign these documents while on the clock during their shifts. The employees took an average of ten minutes to complete these tasks. Moore did not read the employee handbook or the FMLA policy because she did not have time to do so while also working her shift.

Owes did not tell Moore to take the necessary time to understand these policies nor did Moore ever receive a physical copy of the handbook. The defendant did not conduct any training at Moore's restaurant concerning its FMLA policy, and it did not address the FMLA policy with its managers. Owes herself did not even know what defendant's FMLA policy was.

The Court's Decision

The court rejected defendant's argument that Moore's failure to notify human resources disqualified her from FMLA leave for two primary reasons. First, the court held that the FMLA and its related regulations do not permit employers to deny FMLA leave based on the employer's FMLA-specific notice requirements that exceed its notice requirements for other forms of leave.

After mapping out the text and structure of the FMLA regulations, the court concluded that the regulations that allow employers to require employees comply with the employer's "usual and customary notice and procedural requirements for requesting leave" did not necessarily refer to any heightened notice requirement that the employer may have for FMLA leave, specifically.

So long as employees follow the usual and customary methods for requesting general leave (and not necessarily any more stringent requirements for FMLA leave requests), the court held that this satisfied this portion of the employee's notice obligations under the FMLA rules.

Second, the court noted that the defendant violated its own policy requiring managers to direct employees with potentially FMLA-qualifying leave to contact human resources. This failure shifted the blame from Moore to defendant and qualified as "unusual circumstances" under the FMLA-implementing regulations, which excuse employees from complying with their employers' usual and customary notice and procedural requirements for requesting leave. Accordingly, the court denied the defendant's motion for summary judgment as to

Moore's FMLA interference claim.

As to Moore's claim that her employer retaliated against her for engaging in rights protected by the FMLA, the court again allowed Moore's claim to move forward. Although the court conceded that refusal to work assigned shifts and insubordination are legitimate, nonretaliatory justifications for terminating employment, there was plenty of evidence in the record from which a jury could conclude that these reasons were merely pretext for true retaliatory motivations.

For example, the court highlighted the extremely close temporal proximity in Moore's request for leave and her ultimate firing. Further, the record contained evidence that Moore was subjected to less stringent discipline for the exact same conduct before she had requested FMLA leave. Therefore, the court allowed Moore's retaliation claim to proceed.

Lessons for Employers

Even aside from a comprehensive road map on the FMLA's requirements, this case presents other lessons for employers everywhere. First, this case highlights the value in slowing down a chaotic work environment in order to bring all employees up to speed on company policy.

As noted above, the defendant in this case let a hectic acquisition period interfere with its obligation to keep its employees informed of their rights under applicable employment laws and under relevant company policies. Employees (including Moore) were not given sufficient time to review and digest their employee handbooks or the applicable FMLA policy; nor did they receive a physical copy of such policies to read on their own time.

These same employees, including management personnel, were given no training regarding the handbook or the company's FMLA policy and procedures, more specifically. As a result, Moore did not know the correct protocol for requesting FMLA, nor did she know that the FMLA even existed. These facts prompted the court to determine that any blame for not following the defendant's FMLA notice procedure that would otherwise be attributed to Moore shifted to her employer for its educational shortcomings.

In order to avoid producing similar "unusual circumstances" that excuse employees' failure to following notice requirements, employers should make sure they take the necessary time to apprise employees of their rights under the FMLA and what steps they must follow in order to obtain FMLA leave. At a minimum, this should include insisting that employees have the time — and actually take the time — to review the relevant company policies. Management personnel and supervisors should ensure that employees understand their obligation to understand the policies.

This case serves as a prime illustration that certain formalities, such as Moore signing and initialing her handbook acknowledgement, will not always trump the facts on the ground when the circumstances make clear that the employee clearly did not understand company's policy.

Moreover, employers should ensure that their management personnel have at least a basic understanding of the FMLA's requirements. Here, Owes and Morrissette were wholly unfamiliar with the law and the company's policy regarding employee notice. As a result, neither Owes nor Morrissette informed Moore that she should reach out to human resources to complete her FMLA leave request. Nor did they contact human resources on her behalf, which the defendant's FMLA protocol also required.

This need for FMLA-literate management is bolstered by the court's holding that FMLA regulations require only that employees generally must follow their employer's usual requirements for requesting regular leave and not any heightened notice requirements for requesting FMLA leave, specifically.

The practical significance here is that management must always have a listening ear when employees request leave from work of any kind. Once an employee requests such leave, management must be on guard to determine whether the employee's leave is potentially for an FMLA-qualifying reason and take steps to ensure that he or she does not interfere with an employee taking leave protected by the law. Managers must be diligent in dealing with leave requests and not rely on employees' providing magic words that suggest FMLA leave specifically.

Conclusion

Employers operate in a fast-paced world that demands speed and efficiency. Companies frequently (and understandably) look for fat to trim at the edges to better focus on getting their jobs done in a prompt manner. The Moore case shows that even in the midst of the demands of a why-wait society, certain workplace procedures demand time and attention. Employers must make sure that their employees do more than rubber-stamp their empty acknowledgment on handbooks and policies.

Employers should further confirm that their employees have time to understand such policies and ask any clarifying questions they may have. Further, employers must take the time to train their employees — especially management personnel — regarding the basic FMLA requirements and procedures. This will facilitate a smooth FMLA-request process and avoid "unusual circumstances" that can shift blame from an uninformed employee to a potentially liable employer.

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