

## Federal Court Dismisses FMLA and Massachusetts Small Necessities Leave Act Interference and Retaliation Claims: *Federico v. Town of Rowley*

***Federico v. Town of Rowley*, 2016 WL 7155984 (D. Mass. 2016)**

PDP attorneys John Davis and John Wilusz recently obtained the successful dismissal of a lawsuit arising out of a labor and employment-based dispute. The plaintiff, an Administrative Assistant to the Superintendent of the Rowley Water Department, was responsible for providing administrative support to the Superintendent. The plaintiff held that position for nearly a year before the Town hired a new Superintendent, who became the plaintiff's direct supervisor. Shortly thereafter, the plaintiff took a day off to care for his elderly mother, and contended that his supervisor's attitude toward him then changed. After several weeks in the Department, the Superintendent noted the plaintiff's job performance was poor and held a meeting with the plaintiff, his union representative, and other administrative staff to address the performance issues and the status of several projects. In the meeting, the plaintiff was unable to locate work he claimed to have completed, and stated that he was going home sick and had recorded the whole meeting with his cellular telephone. The plaintiff then left the office and never returned. As of that day, the plaintiff—who had prior work experience performing human resources functions—had worked at the Water Department for exactly one year, and became eligible for Family and Medical Leave Act (FMLA)-protected leave on the day he left.

After the plaintiff's departure, Town staff reviewed the plaintiff's work-issued computer and collected internet browsing history and e-mails sent to and from the plaintiff's work e-mail account, in an effort to find the missing work. The internet browsing history on the plaintiff's computer revealed that he had spent an enormous amount of time at work viewing websites, bulletin boards, and videos, and sending e-mails that were not work-related. Among other things, he viewed thousands of advertisements for escort services and other sexually explicit advertisements and websites, and watched dozens of hours of episodes of the television show Hogan's Heroes during work hours (as many as ten episodes per day). The plaintiff also spent extensive time at work chatting by e-mail with a woman with whom he was having an extramarital affair.

The plaintiff contended that after leaving the Water Department, he began suffering from anxiety, depression, and panic attacks that caused his body temperature to fluctuate. He applied for FMLA leave, supplied the requisite documentation from a physician, and the Town granted his request. After twelve weeks of FMLA leave, the Town extended the plaintiff an additional period of unpaid leave. At the conclusion of that period, the plaintiff was directed to attend a series of investigatory interviews, yet failed to attend. The Board of Water Commissioners and Board of Selectmen subsequently voted that charges of misconduct against the plaintiff were sustained, and voted to terminate his employment based on neglect of duty, conduct unbecoming an employee, and insubordination. After his termination, the plaintiff filed a lawsuit in Essex Superior Court, bringing five claims against the Town and his supervisor for

- (1) interference with plaintiff's rights under the federal Family and Medical Leave Act;
- (2) retaliation under the federal Family and Medical Leave Act;
- (3) interference with plaintiff's rights under the Massachusetts Small Necessities Leave Act, M.G.L. ch. 149, § 52D;

(4) retaliation under the Massachusetts Small Necessities Leave Act; and

(5) invasion of privacy (arising out of an allegation that his supervisor had searched his personal effects and photographed work contained in his briefcase without his permission).

The defendants removed the action to United States District Court and, after conducting discovery, moved for summary judgment on all five claims.

The Court (Saylor, J.) granted the defendants' Motion with respect to all counts of plaintiff's Complaint. As to the plaintiff's claims under the Massachusetts Small Necessities Leave Act, the Court agreed with the defendants that the plaintiff was not eligible to take protected leave to care for his elderly mother, as he had not been employed by the Town for one year as of the date of the allegedly protected leave and did not qualify for the statute's protection. The Court also held that the plaintiff had not met the elements of a claim for interference with protected FMLA rights because he had not produced evidence to show he was denied any FMLA benefits to which he was entitled. Rather, the evidence demonstrated the plaintiff received all materials necessary to apply for FMLA leave; he was granted leave; and there was no evidence to support the claim of interference. With respect to the plaintiff's FMLA retaliation claim, the Court applied the burden-shifting framework of *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973) and held that the plaintiff had barely established a prima facie case of retaliation based on the temporal proximity between the application for leave and the Town's adverse employment action. However, the Town offered legitimate, non-retaliatory reasons for the termination which remained un rebutted. As there was no evidence that the adverse action was, in fact, a pretext for retaliation, dismissal of the claim was appropriate. With respect to the plaintiff's invasion of privacy claim, the Court agreed with the defendants that the Town was immune from this intentional tort pursuant to M.G.L. ch. 258, § 10(c). As to the Superintendent, the Court agreed there was no evidence of any disclosure of private information and the Superintendent's act of photographing work, visible in the plaintiff's briefcase (taken home in defiance of his supervisor's orders), did not constitute an unreasonable and substantial or serious intrusion upon the plaintiff's privacy. Accordingly, summary judgment was granted for both defendants on all claims.

## QUESTIONS?

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