

Family And Medical Leave Act: Nurse On Leave, Position Eliminated. Can She Sue?

A registered nurse had an extensive background in critical care. She was a critical care nurse in neurological surgical intensive care for several years, then went to work in the critical care trauma unit. Thirteen years later she became a part-time relief shift director.

After a change in the hospital's corporate ownership the new management offered her the position of hospital bed chief. That meant her job was to keep current on the status of available beds hospital-wide, ensure timely transfers of patients from unit to unit and coordinate new admissions to various units with the admissions office.

According to the nurse, she was assured by the senior director of nursing that hospital management and the staff physicians were very pleased with the arrangement and that her job was there to stay.

FMLA Leave Taken

The nurse had to take about nine weeks leave for a serious health condition. There was no dispute she was entitled to leave, properly requested leave, was permitted to take leave, properly informed her employer of her intention to return from leave and returned able to resume full-time work at her former position.

The issue was what happened when she returned. When she got back she was paged by the senior nursing director to her office, told her position had been eliminated and told to go home and return the next day to meet with human resources.

The next day the human resources director offered her the chance to apply for unit director of oncology, relief shift director in one of several units, staff nurse or per-diem staff nurse.

The nurse refused to apply for any of these positions and was terminated. Later a new position of nursing resources director was created, basically the same as her old job, but the position was given to another nurse.

The nurse sued for violation of the US Family and Medical Leave Act (FMLA) in Federal District Court.

The US Family and Medical Leave Act (FMLA) says an employee is entitled to reinstatement to the same position or an equivalent position when the employee returns from leave.

This is not an absolute entitlement. An employer can deny reinstatement if the employee would have lost his or her job during the leave period even if he or she had been working.

The rationale is that the FMLA was not meant to give an employee returning from leave the right to "bump" another employee, which would be the logical implication if the employer had an absolute obligation to give the employee a job when he or she returned from leave.

It boils down to a question of burden of proof. It is only fair to put the burden of proof on the employer.

If an employee was eligible for FMLA leave, gave proper notice of intent to take leave, returned from leave on time, etc., but the employee's position no longer exists, the employer must be able to convince a court that would have happened anyway.

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY
December 18, 2002

Summary Judgments Denied

The US District Court for the District of New Jersey ruled the issues were not clear-cut enough for either side to be given a summary judgement in their favor.

The court handed down a preliminary ruling defining the issues for a full-blown civil jury trial.

Burden of Proof Placed on the Employer

The right to reinstatement after returning from family or medical leave is not absolute.

If an employee's job legitimately would have been eliminated even if the employee was on the job working during the time the employee was out on leave, the FMLA does not require reinstatement.

That is, the FMLA does not require an employer to bump someone else from his or her job to accommodate an employee returning from leave whose job was legitimately eliminated.

In fairness, however, it is up to the employer to prove that the position would have been eliminated. The hospital would have to get the jury to believe that various managers wanted to shift the duties of another position to the bed chief and eliminate the other position but eventually reached a consensus to eliminate the bed chief position instead.

Since the employer, not the employee, has access to internal memoranda and minutes of management meetings, the employer has this burden of proof.

Having the burden of proof is a heavy responsibility. Cases often turn on the burden of proof. If the side who has the burden of proof fails to convince the judge or jury, that side simply loses the case.

The nurse only had to prove she was not offered an equivalent position. The oncology unit-director position was not equivalent, she felt, and she was not actually offered the position, only the chance to apply for it. The rest was up to the hospital as her employer to prove. **Parker v. Hahne-mann University Hospital, __ F. Supp. 2d __, 2002 WL 31830647 (D. N.J., December 18, 2002).**