PRESENTATION

Be the Judge: Recent Employment Cases Worth Noting

Presented By:

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EXPAND YOUR EXPECTATIONS℠

Budhun v. Reading Hosp. & Medical Center. (3rd Cir. 8/27/14)

- Employee hired as credentialing assistant in 2008
- Job required employee to generate and maintain records (60% of the job was typing)
- Broke pinky finger and applied for FMLA leave on August 2, 2010
- Doctor provided certification that employee could resume work with "no restrictions" on August 16, 2010
- HR refused employee's attempt to resume work b/c her hand was not healed enough to type at full capacity
- Reading replaced employee and terminated her on Sept. 25 after FMLA leave expired
- Brought interference and retaliation claims under FMLA

What are the issues?

- Expert doctor wrote that employee could resume work with “no restrictions”
- Employee gave employer consent to contact her doctor
- Employee tried to resume work before FMLA leave expired
- HR stated that typing at full capacity was “essential function”
- HR overruled doctor’s fitness-for-duty certification

You Decide…

- Whoa or Go to the Jury?

To the Jury

- WHY?

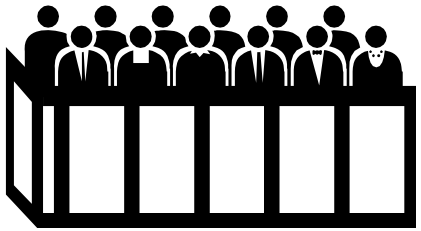
Williams v. Revco (11th Cir. 1/14/14)

- Staff pharmacist with diabetes
- No dispute – the employee was disabled
- Admitted his position involved standing over the course of an 8 hour shift and frequent movement, which he could not do
- Wanted full-time assistance of another intern or technician
- Doctor never submitted any paperwork outlining accommodations even though CVS asked for supporting documentation
- CVS denied the request.
- Pharmacist brought suit under ADA.

What are the issues?

- Is Plaintiff “Qualified?” – Can he perform the essential functions of his position with or without a Reasonable Accommodation?
- Did the employer meet its burden to engage in an interactive process?

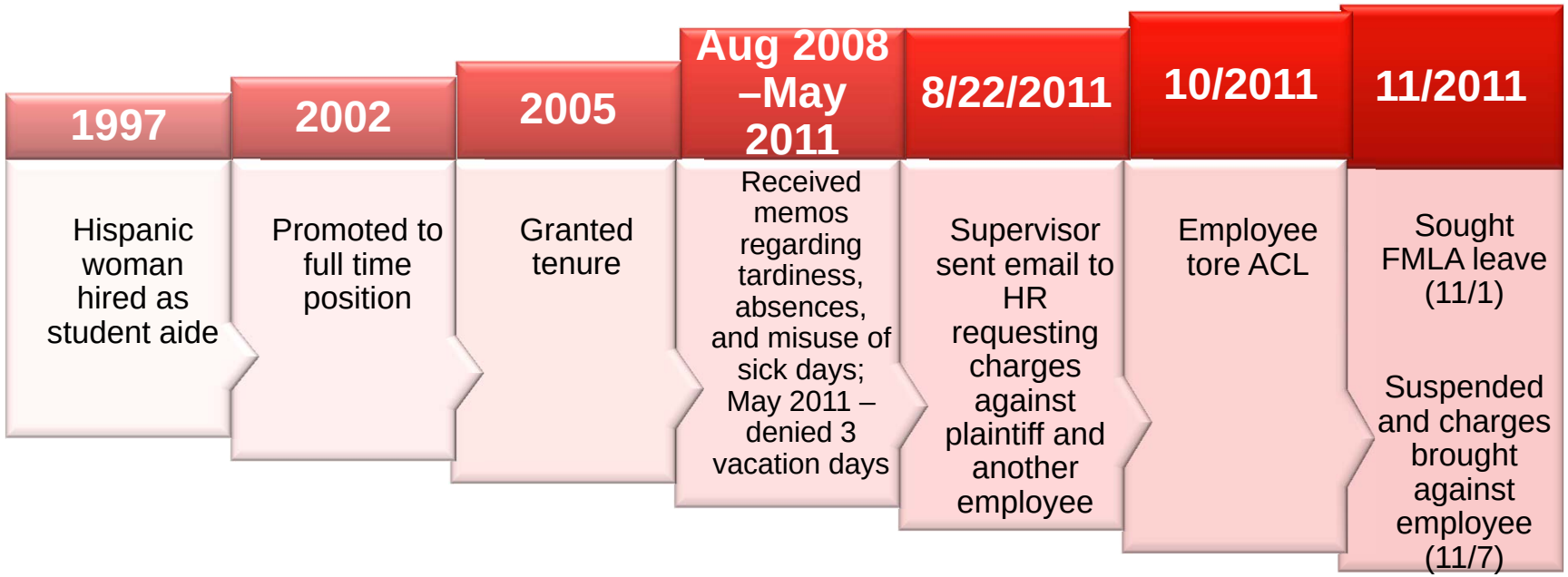
A jury of peers or should the Plaintiff fear?



Summary Judgment Granted and Affirmed

Do you agree?

Colon v. Fashion Institute of Technology (S.D.N.Y 9/18/13)



What are the issues?

- FMLA interference
- FMLA retaliation

You Decide…

- Send it to the Jury or Send the employee home?

Decision: To the Jury

- **FMLA Interference** – Plaintiff's leave notice was followed by notification of charges and suspension
  - While supervisor recommended charges **3 months** before plaintiff requested FMLA leave, employer's decision to suspend and terminate came **after** plaintiff's request for leave
  - Court found decision came after b/c other employee brought up on charges was not terminated
- **FMLA Retaliation**
  - Prima facie case?
    - Employer provided evidence that attendance and tardiness were motivating factors for plaintiff's suspension;
    - Pretext - Plaintiff's notice to employer of intent to take FMLA leave could have been motivating factor for suspension

Kirkland v. Cablevision Systems (2nd Cir. 7/25/14)

- Black male employee began work in 1999
- Promoted to Area Operations Manager in 2004 (only black employee in this role)
- Contends that salary was less than other white AOMs
- Alleges that poor annual performance evaluations were due to his complaints of discrimination
- Requested to move to a closer home base store but was denied while other AOMs were allowed to save on commute time
- Company received complaints throughout 2005-2008 about his managing style and favoritism toward female employees
- Terminated after reports of breaking company policies – supported by affidavits of three subordinates

What's the big deal?

- Race discrimination
- Retaliation
  - What would you do?

Court of Appeals Vacated Summary Judgment

- True that company maintained records of employee's poor performance
- True that employee never appealed the performance reviews with written allegations of race discrimination
- However: Court placed significant reliance on testimony of plaintiff's replacement:
  - Supervisor confided in her that Region needed to "lighten up a bit"
  - HR told her that supervisor was known as "KKK w/o the hood"
  - When suit filed, supervisor asked her to gather negative info on Plaintiff; turned against her when didn't have any
- Retaliation: Court placed emphasis on employee's affidavit claiming that company back-dated performance reviews to cover up the real reason for terminating him

Hague v. University of Texas Health Science Center at San Antonio (5th Cir. 3/28/14)

- Employee's supervisor read an explicit magazine article during a department meeting
- Supervisor gave sexually explicit doll to employee's co-worker
- Doctor on employee's team allegedly treated employees differently depending on gender
- Employee filed internal complaint against her supervisor and doctor co-worker based on the sexually explicit references.
- Supervisor was reprimanded internally but co-worker doctor was cleared after an internal investigation.
- Employee filed EEOC complaint on June 17, 2011 and was notified that her contract would not be renewed on June 20, 2011
- Undisputed university did not receive charge until June 21

What are the issues?

- Sexual Harassment
- Sex Discrimination
- Retaliation
  - **What would you do?**

Granted Summary Judgment in Part and Denied in Part

- Sexual Harassment – Summary Judgment Granted
  - Not directed to employee
  - Doctor was not employee's supervisor – no power to term
  - Harassment did not affect a term, condition, or privilege of employment
- Sex Discrimination – Summary Judgment Granted
  - Employee failed to exhaust administrative remedies by failing to include allegation in EEOC complaint
- Retaliation – Summary Judgment **Denied**
  - Term letter had no explanation for term, but manager gave "many" reasons at deposition
  - Employee's co-workers who supported EEOC claim were also terminated (One who got doll and one who complained about doll)
  - Employee's supervisor based termination of employee on "distrust" due to employee's allegation against him

Hurley v. Kent of Naples (11th Cir. 3/20/14)

- Email with “vacation schedule” – subject to change – seeking 11 weeks of vacation over two years
- Denied request
- Replied “not a request; it was a schedule.” “I have been advised by medical/health professionals that my need to avail myself of vacation time I have earned is no longer optional.”
- Next day, employee discussed email with supervisor. Terminated for insubordination and poor performance.
- Curiously, a week after termination, employee visited doctor and filed an FMLA form. Doctor noted employee suffered from depression but could not determine the duration or frequency of incapacity.

What are the issues?

- FMLA interference and retaliation
    - What would you do?

To the jury

- Plaintiff said:
  - At trial, Plaintiff testified that he and his wife picked days without input from Dr. – coinciding with holiday weekends
  - Leave not intended to predict when he would have a depressive episode but were scheduled to keep him well by seeing Grand Canyon, etc.
  - No specific time off suggested by Dr., but Dr. did say take time off to improve health

Jury said:

- Employee was entitled to FMLA benefits by the employer which were denied;
- Employee's request for leave was not a substantial reason for terminating the employee; BUT
- Employee should receive damages:
  - $200,000.00 in actual damages
  - $200,000.00 in liquidated damages
  - $353,901.85 in front pay
  - $233,109.75 in attorneys fees
  - $21,329.36 in costs = $1,008,340.96

WHAT DOES APPEALS COURT DO?

Reversed on Appeal with Instructions to Enter Judgment for Defendant!

- Rejected “potentially qualify” for leave argument for interference claim
- Must provide notice and state the qualifying reason for the need
- Serious health condition includes a chronic condition. However:
- Only protects leave for “any period of incapacity or treatment for such chronic condition.”
- Employee intended to plan treatments – not enough. Can’t foresee periods of incapacity.
- Leave did not qualify for FMLA = no retaliation

QUESTIONS?