

2019 DMEC Annual Conference
Jury Verdicts, Settlements and Recent Court Cases

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Presentation Reference Material

FMLA – Notice Cases

Spratt v. FCA US LLC (ED MI 3/25/19)	Request to work from home does not put ER on notice of need for FMLA leave
Castenada v. Bd. Of Educ. Of City of Chicago (ND IL 3/25/19)	Fact that a third-party absence administrator knew of need for FMLA leave does not put ER on notice of need for FMLA leave
Hannah P v. Coats, Director of National Intelligence (4th Cir. 2/19/19)	EE’s disclosure of depression (from working on the Edward Snowden investigation) and advice that her MD was recommending 4 weeks of leave put ER on notice to inquire about where EE was seeking FMLA leave.

FMLA – Interference

Wallace v. Lockheed Martin (D. AZ 5/14/19)	Asking EE to delay the start of FMLA leave is interference
Arriola v. Cardinal Stritch University (ED WI 2/28/19)	EE’s absence was not designated as FMLA leave but no interference because EE given 14 weeks of leave
Curlee v. Lewis Bros. Bakeries (MD TN 4/3/19)	If EE returns FMLA form and there are gaps, ER must help EE fill it out. Failure to do so is interference.
Holladay v. Rockwell Collins (ND IA 1/24/19)	Requiring doctor’s note for FMLA eligible absence is interference
Trawick v. Carmike Cinemas (MD GA 2/14/19)	Requiring EE to work on leave and pressuring EE to come back early not FMLA interference because EE was paid during leave.
Barasso v. Children’s Hosp. of Pittsburgh (WD PA 1/28/19)	Encouraging EE to take FMLA in full day increments is interference
Byrd v City of Houston (SD Texas 1/29/19)	Equitable estoppel to deny FMLA protection when ER approved FMLA for EE who was not eligible

Reagan v. Centre Lifelink Emergency Medical Svcs. (3d Cir. 5/24/19)	No interference for firing EE on FMLA leave for violating noncompete, or for requiring EE to answer questions about it
Payne v. British Embassy (D DC 5/24/19)	Manager instant messaged EE and talked with her on phone during leave, as well as other negative comments about leave.
Dunger v. Union Pacific RR Co. (CD CA 6/3/19)	EE had photo of him on boat trip while out on FMLA leave – ER believed it was abuse. Court said as long as “believed” not matter whether it was or was not abuse (EE comment on Facebook post – “I am not here”)
Banaga v. Government Employees Insurance Co. (SD CA 6/12/19)	Court relied upon 29 CFR section 825.215(c)(2) – if bonus is based on achievement of specific goals such as products sold or perfect attendance and EE has not met goal due to FMLA leave bonus may be denied unless otherwise paid to EEs on equivalent leave status for non-FMLA reason For example, if a person who used paid vacation for an FMLA protected leave would be paid, EE must be paid.

FMLA – Call-in Requirements

Becknell v. University of Kentucky (ED KY 4/22/19)	Call-in requirements violated FMLA because no exception for unforeseen circumstances – but ER could use requirements to deny paid leave
Campbell v. Kbrywyle Tech. Solutions (ND Alabama 3/26/19)	Call-in requirements required 24 notice. Even though not FMLA compliant, no adverse action here because EE was not denied leave.
Archey v. AT&T Mobility Services (ED KY 3/29/19)	ER could not enforce call-in requirements because it had inconsistent written procedures
Barasso v. Children’s Hosp. of Pittsburgh (WD PA 1/28/19)	Requiring EE to call in at least 30 minutes before shift does not comply with FMLA
Moore v. GPS Hospitality Partners (SD Alabama 6/3/19)	ER could not enforce call-in requirements where the requirements were only for FMLA leave and not all leaves and where requirements were only in Handbook and retail EE had limited access to handbook.

FMLA – Retaliation

Ottley-Cousin v. MMC Holdings, Inc. (5/6/19)	Eliminating job because of budgetary reasons another may be retaliation where (1) temporal proximity to leave; (2) manager made negative comment leave; and (3) EE only one impacted
Weber v. County of Lancaster (D. Nebraska 4/1/19)	Terminating EE for performance problems may be retaliation where (1) temporal proximity and (2) evidence EE had performance problems before and not terminated
Brown v. Duke Energy Corp. (SD Ohio 3/31/19)	May be retaliation where PIP referred to FMLA absences

Tinsley v. Caterpillar Fin. Serv. Corp. (6th Cir. 3/20/19)	Negative performance review after FMLA leave may be retaliation because may discourage leaves
Baird v. Progress Rail Manufacturing (SD Indiana 5/21/19)	Performance review mentioned attendance and led to lower raise

FMLA – Forced Leave

Lamitie v. Middlesex Hospital (D. CT 5/10/19)	Forced FMLA leave without adverse action is not FMLA violation
Vonderhaar v. AT&T Mobility Services (ED KY 3/11/19)	Forced FMLA leave is only violation where there is prejudice
Barasso v. Children’s Hospital of Pittsburgh (WD PA 1/28/19)	Forced full day increments is FMLA interference
McNulty v. County of Warren (NDNY 3/7/19)	Forced FMLA leave was interference where EE had received treatment in past for alcoholism and ER placed her on leave and required medical exam out of concern she had relapsed (observed anxiety and tremors)

ADA – Processes, Forms, etc.

Weatherspoon v. Azar (D.D.C. 5/8/19)	Delay of 4-6 months in providing accommodation was not unreasonable in this case
Texas Dept. of Transportation v. Lara (Court of Appeals TX 5/9/19)	EE was 20-year veteran who requested 5-week leave. Jury trial as to whether ER violated ADA since employee handbook had a provision for a 1-year personal leave
Hock v. Mesa County Valley School District 51 (D CO 5/13/19)	Medical certification form asked MD to describe any “physical or mental” condition when only physical was at issue. Triable ADA claim.
Miceli v. JetBlue Airways Corp. (1st Cir. 1/28/19)	No ADA violation for failure to accommodate where ER had centralized ADA process that EE did not follow

ADA – Essential Functions

Incutto v. Newton Public Schools (D. MA 4/4/19)	Full time attendance in the classroom is not an essential job function – even though EE was told she was being hired for a “full time job”
Clark v. Charter Communications (5th Cir. 6/19/19)	EE had narcolepsy and fell asleep while working – Staying awake in role as specialist at Operations Center with responsibility of monitoring system displays for outages was essential job function.
Smith v. Cook County (ND IL)	Ability to work overtime and different shifts is an essential job

4/8/19)	function
State of Arizona v. Smith's Food & Drug Centers (D. AZ 3/1/19)	Jury trial as to whether standing and walking are essential functions where job description listed it as "physical demand" (pharmacy technician wanted a stool)
Campbell v. Kbrywyle Tech. Solutions (ND Alabama 3/26/19)	Jury trial as to whether overtime is an essential function of EE's job
Papenfuss v. Butitta Bros. Auto (ND IL 3/13/19)	EE could not drive for 6 months because of seizure – jury trial as to whether driving is essential job function
Kosack v. Energy enterprises, Inc. (SDNY 1/25/19)	Jury trial as to whether overtime is essential function of EE's job
Gale v Trinity Health Systems (ED Ohio 1/28/19)	Jury trial as to whether lifting was an essential function. Court says that must examine on actual work performed and not just job description.
EEOC v. McCleod Health (4th Cir. 1/31/19)	Court reversed summary judgment for ER and said that whether navigating between different campuses was an essential function of job of EE with bone deformity who fell at work while walking between buildings

ADA – Medical Must Support Accommodations

Palmer v. McDonald (Veterans' Affairs) (MD FLA 4/4/19)	ER made several accommodations but not for notetaking. Court said medical did not address notetaking.
Stovall v. Brykan Legends (D. KS 4/17/19)	EE's request to be transferred to a location nearer his family was just a preference and not a required accommodation
Hudson v. Tyson Farms (11th Cir. 4/29/19)	EE's doctor recommended an accommodation but did not say that the EE could not work without the accommodation
Butler v. Pepperdam Construction Co. (D. SC 3/22/19)	EE was able to do jobs without accommodation, but it made it much more painful – court said that justified need for accommodation
Brown v. Duke Energy Corp. (SD Ohio 3/31/19)	EE wanted air filter as accommodation for mold allergy, but medical documentation did not recommend air filter
Brunckhorst v. City of Oak Park Heights (8th Cir. 2/4/19)	EE said it would be "easier" to work from home. Court said this is a preference and not a documented need for an accommodation.

ADA – What is A Reasonable Accommodation

McIntyre v. Washington Metropolitan Area Transit Auth. (D. DC 5/15/19)	EE wanted change in hours – court granted summary judgment saying that would create undue hardship for others
Schiller v No. Suburban Spec. Rec. Dept (ND IL 4/1/19)	Jury trial about whether providing a co-leader of a camp is reasonable accommodation – had been done in the past
Barabadosa v. Bd. Of Educ. Town of Manchester (CT App. Ct. 4/23/19)	Extended ADA intermittent leave is not reasonable accommodation – regular and reliable attendance is essential job function.
Washington v. Fanning (US Army) (SD GA 3/11/19)	Advancing paid sick leave is not a reasonable accommodation because EE may not pay it back
Caraballo v. City of Jersey City Police Dept. (Sup. Ct. NJ 03/25/19)	ER does not have to provide medical treatment as an accommodation
Riggs v. Bennett County Hosp. & Nursing Home (D. SD 3/31/19)	Bringing service dog for EE with emotional issues to work is not reasonable if others must care for it
Ortega v. Dignity Health (Ct. of App. CA 1/9/19)	ER does not have to grant the "best" accommodation – just an effective one
Schiller v. No. Suburban Spec. Rec. Dept. (ND IL 4/1/19)	Jury trial about whether providing a co-leader of a camp is a reasonable accommodation – had been done in the past.
Hall v. US Cargo and Courier Service (SD Ohio 6/10/19)	UPS truck driver requested reduced workload and time off to go to doctor's appointments. Court cited <u>Hostettler</u> and said jury trial was needed as to whether reasonable accommodation.

Cook v. Federal Reserve Bank (SD Ohio 6/17/19)

New EE and not FMLA eligible. Had migraines. Needed time off and then was extended because of reaction to medicine. Ended up being three months. Court denied SJ. Leave not too long and not indefinite. Jury trial required.

ADA – My Manager is Stressing Me Out!

Summers v. Target Corp. (ED WI 5/15/19)	Not getting along with supervisor is not grounds for ADA claim
Manning v. Abington Rockland Joint Water Works (D. MA 3/4/19)	Request for stress workplace is unreasonable as a matter of law
Woolf v. Bloomberg (SDNY 3/5/19)	Transfer to a new supervisor is not a reasonable accommodation as a matter of law
Andrews v Green Bay Packaging, Inc. (ED Ark. 3/5/19)	Accommodation request by EE with emotional issues to have “no contact” with manager, to have all instructions in writing and to have someone present at meetings was unreasonable
Seehawer v. McMinnville Water & Light (D. Oregon 3/15/19)	Summary judgment denied to ER where it denied request by EE who was gay and had depression to be transferred away from bullies
Nguyen v. Mnuchin (D MD 5/28/19)	Deny summary judgment where EE complained about manager and asked to be transferred to open position and ER denied.
Reed v. Nike, Inc. (SD NY 5/31/19)	Deny summary judgment. Can be reasonable accommodation to instruct manager to stop talking about an employee’s mood and energy and whether she was happy at work.

ADA – Be Careful about Relying on Safety Concerns

EEOC v. Gulf Logistics Operating (ED LA 4/5/19)	Jury trial where ER ordered medical exam for safety concern just because EE was depressed
Pickard v. City of Tucson (D. AZ 3/12/19)	No ADA violation where ER removed EE with hand tremor from bomb squad
Gale v. Trinity Health Systems (ED Ohio 1/28/19)	ER does not have to grant more training as accommodation where EE’s performance to date has been very bad
Johnson v. Ford Motor Co. (ND IL 1/11/19)	It is okay to request fitness for duty when EE is showing psychological issues
Babb v. Maryville Anesthesiologist (E.D. TN 1/16/19)	No ADA violation to order medical exam for MD who made patient care errors
EEOC v. McCleod Health (4th Cir. 1/31/19)	EE had bone deformity and fell while walking on campus. Court said jury issue as to whether ER had reasonable safety concerns to justify asking for medical exam.

ADA – Miscellaneous

Performance may be considered as a factor in denying or granting accommodations	
McDaniel v. Wilkie (US Veterans’ Affairs) (ND Ohio 2/14/19)	EE not productive telecommuting 4X/week. Not have to agree to 5X/week

**Gale v. Trinity Health Systems (ED
Ohio 1/28/19)**

Additional training not required as accommodation when EE's performance very poor to date

Continued debate about what is/is not a disability	
Bennet v. Maryland Environmental Service (D. MD 3/12/19)	Obstructive sleep apnea is not an ADAAA disability in this case
Watson v. Wilkie (WD PA 5/21/19)	Sleep apnea not a disability in this case.
Woolf v. Bloomberg (SDNY 3/5/19)	Migraines were not an ADAAA disability in this case
Roan v. UPS (MD TN 5/20/19)	Temporary conditions of abdominal pain and nausea that required five days off work and upon return to work being diagnosed with strain of muscle, fascia and tendon in right hip that caused minor lifting restrictions for 2 ½ weeks not disability.
Jay v. Auburn University (SD Alabama 5/23/19)	A diagnosis is not the same thing as a disability – here PTSD.
Richardson v. Chicago Transit Authority (7th Cir. 6/12/19)	Obesity is not a disability unless caused by underlying physiological condition (regarded as claim must be based on being perceived as obesity being caused by underlying physiological condition)
No ADA protection for misconduct caused by disability	
Jeffrey v. Thomas Jefferson Univ. Hosp. (ED PA 5/14/19)	EE with bipolar can be fired for misconduct even if conduct caused by disability
Kassa v. Synovus Bank (MD GA 1/3/19)	EE can be terminated for outburst caused by disability
Essential functions may change over time	
Bilinsky v. American Airlines (7th Cir. 6/26/19)	EE had MS and was allowed to work from home in role as communications specialist assisting distributing information to flight attendants. After merger with US Air, VP decided that everyone needed to be in office to work efficiently and meet demands. Court emphasized general consensus that regular work-site attendance is an essential function.

Always: Avoid Stupid Comments

EEOC v. Crain Automotive Holdings (ED ARK 4/11/19)	ER terminated EE who was not eligible for FMLA leave after requesting 3 weeks of leave for depression. ER said “because of your health this won’t work out”
Dunsworth v. National Oilwell Varco (WD OK 5/24/19)	ER told EE that job would not work out because of physical issues and EE’s need to take pain medication
Baum v. Metro Restoration Services, Inc. (6th Cir. 4/11/19)	ER told EE he was being fired because of health issues
Poe v. Waste Connections US, Inc. (WD WA 3/7/19)	Managers were dissatisfied with EE because of symptoms of depression: negativity and unhappiness

	Problematic text messages
Wilders v. Quikrete Cos. (WD PA 3/12/19)	Manager's preoccupation with an injury is evidence of pretext
King v. Cincinnati Public Schools (SD Ohio 3/13/19)	Manager told team that EE would be out for psychological reasons and made other negative statements
Wingerd v. Kaabooworks Services (D. KS 3/13/19)	EE had cancer and was frail looking
McCoy v. Diamond Electric Mfg. Corp. (SD WV 2/19/19)	Manager made comments that EE who took FMLA leave was "not dependable"
Reed v. Nike, Inc. (SD NY 5/31/19)	Manager made comments that FMLA leave left them "short staffed."