

The Importance of a Doctor's Note in a Disability Discrimination Case

by Dennis J. Merley - Tuesday, January 08, 2019



The all-important doctor's note was the focal point when an employee claimed that she should not have been terminated for her 195th absent day.

Sheena Lipp worked in a production capacity for Cargill Meat Solutions Corp. ("Cargill"). She suffered from a lung disease that impaired her ability to breathe or physically exert herself, and periodically experienced flare-ups causing her to miss up to four days of work. Cargill consistently accommodated Lipp's restrictions, including observing limits on the number of hours she worked in a week and granting permission to miss work during her flare-ups.

Employee Takes Family Leave

Independent of her own medical issues, Lipp requested and received permission to take a nine-month leave to tend to her ailing mother. Once this leave exceeded her leave entitlement under the Family and Medical Leave Act (FMLA), Lipp began incurring points under Cargill's attendance system that assesses a point for every absence and results in the start of progressive discipline once the employee reaches seven points. Consequently, Lipp's point total jumped from 8 to a whopping 194.

When Lipp returned from her leave, she received several disciplinary warnings as well as a Last Chance Agreement, which told her that while she had already far-surpassed the point total for termination, she could retain her job unless she accumulated additional attendance points. She was assured, however, that she would not be assessed a point for missing work due to her continuing flare-ups. Indeed, within a week, she was absent for that reason and after returning and submitting a doctor's note verifying her absence, she did not receive a point or a warning.

Two weeks later, Lipp called in to report another absence and identified “vacation” as the reason even though she had no vacation balance. Cargill promptly terminated her employment under the Last Chance Agreement, at which time Lipp claimed that she mistakenly cited the wrong reason for the absence and that it was actually due to her medical condition. Cargill gave her a chance to submit medical verification but she failed to do so, so her termination remained effective.

You Aren’t Qualified If You Don’t Show Up

Lipp sued under the Americans with Disabilities Act (“ADA”) and corresponding state law claiming that Cargill refused to accommodate her by waiving the attendance point and discriminated against her based on her disability. The trial court granted Cargill summary judgement (early dismissal), prompting Lipp to bring the case to the Eighth Circuit Court of Appeals.

The **Appeals Court sided with Cargill**, explaining first that the ADA required Lipp to establish that she was a “qualified individual,” meaning a person “who, with or without reasonable accommodation, can perform the essential functions” of his or her job. In this regard, the Court observed that regular and reliable attendance is an essential function of most jobs. Since Cargill’s policy called for termination after nine absences, and since Lipp missed 195 days for reasons unrelated to her own disability, she simply could not establish that she met the qualifications to perform her job even though her absences had been authorized.

As for the failure to accommodate claim, the Court observed that Cargill had accommodated Lipp extensively in the past. In regard to the final absence, Lipp never advised Cargill of the need for accommodation until they had already decided to terminate her. Even then, when Lipp finally did divulge that her final absence was disability-related, Cargill offered to accommodate her upon receipt of verification, which Lipp failed to provide in a timely fashion. Thus, Cargill did offer an accommodation but Lipp failed to meet the reasonable conditions (medical verification) for taking advantage of that offer. As a result, the appeal was denied in full.

Bottom Line

While it is not true in every single case, attendance is an essential function in the vast majority of jobs. Thus, when an employee seeks accommodation (perhaps through a leave of absence or relaxation of attendance standards), the employer may seek verification of the medical reason for the accommodation. If that verification is not forthcoming, the employer has the right to deny the request.

In this case, the employer acted very generously in allowing the employee to return under the Last Chance Agreement, continue missing work due to her medical issues and especially try to salvage her employment after reportedly missing a day for non-medical issues. Her failure, however, to follow through after the company’s very reasonable offer to excuse the absence upon submission of a doctor’s note made the termination an easy call and, according to the

Court, a legal one.

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