

Second Circuit: Application of Neutral Policy Does Not Interfere with FMLA Rights

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As recently reaffirmed by the U.S. Court of Appeals for the Second Circuit, neutral application of a policy to prorate incentive compensation contributions during leaves of absence does not unlawfully interfere with an employee's rights under the Family and Medical Leave Act (FMLA). In *Clemens v. Moody's Analytics, Inc.*, Plaintiff contended that he was denied benefits because his bonus was already "self-prorating" due to a reduced work period that naturally yielded a lesser bonus amount. In effect, he claimed, additional prorating was a doubled-reduction. Since the undisputed evidence showed that the employer's prorating policy was neutrally applied based on the length of the employee's leave (regardless of the reason for leave), there was no discriminatory interference with FMLA rights.

This decision serves as an important reminder that employers must review seemingly neutral policies (such as, for example, attendance or bonus policies) to consider the impact of those policies on employees on FMLA leave.

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