

What Am I Doing Wrong?? Common FMLA Mistakes: Not Adequately Investigating a Potential FMLA Abuse Situation

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“What did I do wrong?” and “Am I doing this correctly?” are frequent questions from clients regarding FMLA administration. This is the twelfth in a series highlighting some of the more common mistakes employers can inadvertently make regarding FMLA administration.

Not adequately investigating a potential FMLA abuse situation to put the employer in a stronger defensive position.

While an employer may never discourage legitimate FMLA leave, if there is suspected abuse of FMLA leave, an employer should investigate. Some courts have supported an employee’s termination for FMLA abuse when the employer acted reasonably and in good faith, and could establish that there was an “honest belief” that the employee engaged in FMLA abuse.

In *Capps v. Mondelez Global, LLC*, Case No. 15-3839 (3d Cir. Jan. 30, 2017), an employee’s manager found in his company mailbox an anonymously-delivered newspaper clipping reporting that the employee was arrested and convicted of DUI the previous year. The company investigated and reviewed the court docket to compare dates of the employee’s court appearances with dates the employee took FMLA leave. The date of the employee’s arrest and other court dates for the DUI proceedings matched dates the employee took FMLA leave. When asked, the employee provided documents that the employer found not to be credible. The court found that the employer had an honest belief that the employee abused FMLA, based on the correlating dates as well as the employee’s failure to provide an adequate excuse. The court stated that the employer could not be liable for FMLA interference because it “honestly believed” that the employee had abused his taking of FMLA leave.

In *Gurne v. Michigan Bell Telephone Co.*, Case No. 10-14666 (E.D. Mich., Nov. 15, 2011), an employee took FMLA on a day she was scheduled to work until 5:00 p.m. A co-worker reported seeing the employee at a birthday party for a mutual friend between 4:30 p.m. and 6:30 p.m. The employer investigated, but was unable to determine if the employee was actually at the party before the end of her scheduled shift. The employer nevertheless terminated the employee. The court sided with the employee, finding that the employer could not establish that it “honestly believed” that the employee had abused FMLA because the employer’s investigation was not conclusive regarding whether the employee was at the party during her shift.

An employer’s “honest belief” about FMLA abuse should be supported by adequate investigation and supporting facts. The adequacy of the investigation may be subject to legal scrutiny, and a determination can be made on whether the employer was reasonable in the steps it took to form its belief about the employee’s conduct.

For a full discussion of the *Capps v. Mondelez Global, LLC* case, reference the link below: <https://www.natlawreview.com/article/third-circuit-says-last-call-employee-terminated-after-caught-drinking-while-fmla>



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