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The Employer Advisory

EMPLOYER DID NOT VIOLATE FMLA BY REINSTATEMENT TO SAME JOB WITH ADDITIONAL TASKS

The Family and Medical Leave Act ("FMLA") requires employees who have returned from a family or medical leave to be reinstated to the position they held before leave, or to an equivalent one. This equivalency requirement does not extend to de minimus or intangible, immeasurable aspects of the job.

Tina Mitchell ("the employee") began FMLA leave from Dutchmen Manufacturing, Inc. ("the employer"). The employer manufactured recreational vehicles. Before the employee's leave she worked on an assembly line. Her job consisted of cleaning tasks. During the employee's leave the employer consolidated its product lines and reassigned personnel to different tasks and departments. When the employee returned from leave she was reassigned to her former department, expected to perform the same tasks, and received the same pay and benefits as before. However, she was now required to use small hand tools. The employee injured her wrist. The employee's doctor instructed her to limit the use of her right hand. When the employee told her supervisor of these restrictions, he excused her from some duties. The employee then walked off the job and never returned. The employer's director of human resources mailed the employee a letter that offered to "accommodate" her new work restrictions and informed her that failure to work would be considered a voluntary resignation. The employee did not communicate further with the employer. Her employment was terminated.

The employee filed suit in the Federal District Court for the Northern District of Indiana, alleging violations of FMLA. The district court granted summary judgment. The United States Court of Appeals for the Seventh Circuit affirmed.

The issue before the Court of Appeals was whether the employer had reinstated the employee to a position equivalent to the one she held before her leave. The employee's new position was the same, except that she was now required to perform some additional tasks. These new tasks were neither physically demanding nor overly time consuming. The employer's requirement that the employee use small hand tools was a de minimus, intangible, and immeasurable aspect of a job.

An employer can require an employee to perform additional tasks upon return from FMLA leave. The equivalency requirement does not extend to de minimus or intangible, immeasurable aspects of the job.

Mitchell v. Dutchmen Manufacturing, Inc., 389 F.3d. 746 (7th Cir 2004). Copyright 2004 Schiff & Hulbert. This employer newsletter is for information purposes only and is not intended to constitute or be a substitute for legal advice. If you have a question about a particular situation, please contact us. SAF.