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Insights

Adapting Performance Metrics for Employees on Reduced Schedules for FMLA and Other Protected Leave

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By: Nancy J. Townsend and Shelley M. Jackson

A recent federal court decision reminds employers that workers on reduced schedules as part of federally guaranteed leave must have their performance metrics scaled down proportionately. In the case of *Wayland v. OSF Healthcare System* (No. 23-1541, February 28, 2024), the Seventh Circuit Court of Appeals overturned a district court decision that had granted summary judgment for the employer in an FMLA retaliation case. The employer argued it had not retaliated, as it granted all requested leave but terminated the employee due to her performance issues. The employee countered, asserting that the employer maintained full-time performance standards without adjusting for FMLA time during termination.

The court clarified that while performance standards need not be adjusted for time on the job, they may require adaptation to prevent penalizing an employee for being absent during approved leave. Failure to make this adjustment could lead to FMLA interference or retaliation claims. Summary judgment for the employer was deemed improper, as a reasonable jury might find the employer unlawfully retaliated for FMLA leave by neglecting to adjust expectations and consider FMLA leave when evaluating performance.

The imperative to avoid penalizing an employee for approved leave absences should logically extend to other types of leave, such as those granted under the Americans with Disabilities Act for disability accommodation or the Pregnant Workers Fairness Act for limitations related to pregnancy, childbirth, and related medical conditions.

For queries about this alert and the impact on your company's employment practices, please contact Nancy J. Townsend, Shelley M. Jackson, or another member of our Labor and Employment Practice.

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