

Case Study Outlines and Questions for Discussion

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FMLA Interference or I'm Leaving on a Jet Plane

- a. **Employee has been approved for intermittent FMLA leave for mental health condition. Employee bid on and was approved for scheduled vacation for a two week period, with the exception of two days in the middle of the vacation. Employee obtains coverage for one of the two days, but can't find someone to cover a shift on one of the intervening days.**

Employee goes on vacation. The day before the uncovered day, from a remote vacation destination, he calls in and indicates he needs to take FMLA for that day only.

An alert employee in HR discovers the FMLA day in the midst of a three week vacation.

What do you do now?

If you question the employee about his FMLA day, are you interfering with his right to take leave?

Can you terminate the Employee for his actions?

Untouchable? Employee Discipline After Protected Leave

Employee is granted FMLA leave which permits her to work part time. Employee is then released to return to work full time.

Customer complains about lack of continuity and wants a full-time employee on account. Employer is unable to continue to offer Employee the reduced work schedule and asks her to come back full time or take continuous leave. Employee returns to work full time.

Five months later, Employee is terminated due to poor work performance.

Is the Employer guilty of interference with the Employee's FMLA rights?

Would the result change if the termination was closer in time to the termination?

How close is too close in time?

What impact would prior performance evaluations have?

What would help in terms of the timing of the evaluations?

How Low Can You Go? Employees and Social Media

- a. **School Employee tweets a number of comments concerning Muslims and African Americans. The tweets are viewed by members of the community and complaints to the School Board ensue.**

Employee agrees to take down her Twitter account. Nonetheless, the tweets become the subject of notoriety in the local, national, and even international press. Employee is ultimately terminated.

Does it matter where the employee was when he or she posted the material?

Does it matter what the employee's position is – teacher vs. custodian vs administrator?

If the Employee is a teacher, does the grade level matter?

If the Employee is a teacher, does it matter what subject he or she teaches?

Were the Employee's First Amendment rights violated?

- b. **School Employee posts pictures with questionable content on social media.**
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Does it matter where Employee was when he or she posted the materials?

Does it matter whether the subject matter of the photos was of Employee versus students?

Does it matter where and when the photos were taken?

Does Employee's position make a difference?

- c. **Public Employee creates posts on social media questioning the training and experience of fellow employees and is disciplined.**
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Does Employee have First Amendment Free Speech rights that protect him/her?

Does it matter what type of work Employee does?

Does it matter what position Employee holds within the organization?

Does the result change if the posts violated Employer's social media policy?

Is Once Enough? How About Twice? Discrimination Claims and How Can You Handle Them?

- a. **An Employee calls an African American Employee a _(fill in the blank)____. African American Employee, with substantial prior employment difficulties, reports the incident(s). Manager, despite concerns of HR, decides to terminate the employment of African American Employee and states, “there’s not going to be any good time to let her go.”**
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Is once enough?

Does it matter what words are put in the blank?

Does it matter if the speaker is a supervisor?

Does African American Employee’s perception of the speaker’s role matter?

Does it matter how long the employee was employed?

What if no one else heard the comment?

If more than one comment was made, does the proximity in time matter?

- b. **Employee A asks to meet privately, after hours, with Employee B to discuss the final written warning which Employee A was issued for various policy violations.**

Employee B is concerned about his own job and insists that Employee A prove she is not wearing a wire. He also tells Employee A that he had been given her termination papers. Employee A reluctantly complies but declines to “seal” their deal to stand by each other with a kiss.

Employee A takes FMLA for five days and upon her return, is called to a meeting with HR. Employee A is told that Employee B had reported that she had “flashed” him in an effort to persuade him not to report further policy violations. Employee A reports only generally that Employee B had done something “horrific” to her and is trying to cover it up. Employee A declined to elaborate based on advice of counsel she retained during her FMLA leave.

Employer begins investigation and advises Employee A of process to report sexual harassment. Employee A declines. Employee A is suspended pending the investigation of the other policy violations.

Employee A commits additional infractions and is terminated.

Does it matter if Employee B was Employee A's Supervisor?

Does the outcome change if Employee B is the one who suspended her?

Was the incident alone enough to constitute a hostile work environment?

Can the Employee A make the case that her termination was related to her report of harassment?

What affect does the Employer's investigation have?

Does it matter whether Employee A takes advantage of offers of assistance?

Can you terminate Employee A's position after this for poor work performance?

Does it matter how closely in time the adverse action and the report occurred?

Reasonable Accommodations: Is There A Limit?

Employer operates a safety-sensitive plant under federal regulations which require that employees undergo a psychological assessment to evaluate “the possible adverse impact of any noted psychological characteristic on the individual’s trustworthiness and reliability” before being granted unrestricted access. Once granted, employees are subject to constant monitoring for suspicious behavior that may trigger the need for reassessment.

In 2009, Employee is hired to protect the facility. His duties require him to carry a firearm and he is authorized to use deadly force.

In 2016, Employee begins to act erratically. A fellow employee reports concerns about Employee’s stability. Employee’s unrestricted access to the facility is suspended pending medical clearance. After examination by a psychologist, Employee was deemed unfit for duty and his employment is terminated.

Did the Employer violate the ADA when it terminated Employee?

Was Employee a qualified individual with a disability?

Should Employee have been given an accommodation before termination?

Fitness for Duty: Is it a Man's World?

- a. Employee is a part-time driver for a parcel delivery service. Employer requires drivers to be able to lift up to 70 pounds. When Employee becomes pregnant, her doctor writes a note indicating that Employee should not lift more than 20 pounds.**

Employer provides similar accommodations to employees returning to work after workplace injuries, for those with ADA-covered disabilities, and for those who have lost DOT certification.

Does the Employer have to provide the accommodation to the pregnant Employee?
Why or why not?

If no, how do you distinguish between the pregnant worker and the other classifications?

- b. An Employer's physical fitness requirements for a woman are significantly less stringent for women than men: 14 versus 30 push-ups.**
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Is this discriminatory?

What else do you need to know?

Does the nature of the employment matter?

Does it matter how and why the standards are imposed?

Let's Stand Together: Discipline for Supporting Others

Employee reports to Employer that another employee had told her that a supervisor offered her a raise in exchange for sex. Employee shared her suspicion that this may have also happened with a second employee who quit.

Employer investigates. Both employees denied the alleged offer. No witnesses who were interviewed had any knowledge of sexual harassment by the supervisor.

Can the Employer terminate Employee for making a false report?

If so, is this Title VII retaliation?

Does it make a difference if one of the subjects of the alleged harassment recants her denial of the offer?

Does it matter whether or not Employee denies making a false report?

Playing the Mental Health Card – Does It Work?

Employer’s Handbook contains “Standards of Behavior,” which caution employees to “avoid offensive language or tone . . . understand that body language and actions speak louder than words . . . that “[a]ll communications should be courteous and respectful” and that employees were to “[p]rovide a work environment free of harassment, offensive language, intimidation and hostility.”

Over the course of two years, Employee is subject to discipline for absenteeism, inappropriate conduct and behavior. His productivity drops so his email is monitored, revealing hundreds of non-business related emails, including some to a co-worker that are “sexually-charged.” Employee is given “final” written warning.

Employee is given two more warnings - one for absenteeism and another for inappropriate behavior.

During this period, Employee seeks assistance through the Employee Assistance Program.

Three days after the last complaint for inappropriate behavior, Employee is hospitalized for five days for depression. After returning to work, he is given the opportunity to respond to the latest complaint against him.

Employee is terminated.

Was Employer within its rights to discharge Employee?

Was there interference with Employee’s FMLA rights?

Is a phone call advising of a pending hospitalization enough to put Employer on notice of Employee’s intent to take FMLA leave?

Was this sufficient notice that Employer should have provided Employee with documentation about his FMLA rights?