

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BARBARA FREDERICK,  
Plaintiff

CIVIL ACTION

V.

BRANDYWINE HOSPITAL, INC., et al., :  
Defendants

NO. 03-3362

MEMORANDUM AND ORDER

McLaughlin, J.

July 1, 2003

The defendants have moved to dismiss the amended complaint, alleging a violation of the Family Medical Leave Act, 29 U.S.C. §§ 2601-2654 ("FMLA"). The plaintiff alleges that the defendants violated the statute when they did not allow her to return to her job after a seven-month leave of absence. Because the law is clear that there is a twelve-week limit for FMLA leave that is not subject to extension, the motion is granted.

According to the amended complaint, the plaintiff began an approved leave of absence on June 25, 1999, in order to care for her adult son who had been diagnosed with leukemia. The leave was designated as FMLA leave. On or about October 4, 1999, Peter Krech, the Hospital's Director of Human Resources, informed her that he had extended her leave so that she could continue caring for her son and that a **job** would be available **to** her when she returned.

On December 14, 1999, the plaintiff's son passed away. On or about January 27, 2000, the plaintiff sought to return from her leave of absence. She was told that her employment had been terminated. The plaintiff alleges that the defendants "led her to believe" that she could return to her position.

The FMLA expressly entitles eligible employees to twelve weeks of leave, for qualifying reasons, during a twelve-month period. 29 U.S.C. § 2612. Upon returning from this statutory leave, an employee is entitled to be restored to the same, or equivalent position as the one she held before taking the leave. Id. § 2614. **An** employer **may** not "interfere with, restrain, or deny the exercise of or the attempt to exercise" any rights that the FMLA guarantees. Id. § 2615.

The Supreme Court recently struck down Department of Labor regulations that could have had the effect of entitling certain employees to more than twelve weeks of leave in a twelve-month period. Ragsdale v. Wolverine World Wide, Inc., 535 U.S. 81 (2002). The Court found that the twelve-week figure was the considered result of legislative compromise and that "[c]ourts and agencies must respect and give effect to these sorts of compromises." Id. at 94. The implication of this is that while a company may grant a more generous leave policy in one manner or another, any leave over the twelve-week figure can not **be** covered under the Act.

One **of** my colleagues, the Honorable Ronald L. Buckwalter, recently has found that the protection offered by the FLMA is strictly limited to the twelve-week period. Panto v. Palmer Dialysis Ctr., No. Civ. A. 01-6013, 2003 WL 1818990 (E.D. Pa. April 7, 2003) (holding that even where an employer has explicitly offered a more generous leave policy, "the FMLA does not create a federal cause **of** action to enforce the voluntary employer policies ... that exceed those required by the FMLA.") I agree with Judge Buckwalter's analysis.

Dismissal of the amended complaint is appropriate. The plaintiff has premised her action entirely on an alleged violation of the FMLA. The FMLA affords an employee twelve weeks of federally protected leave. The FMLA does not provide any protection beyond that statutory maximum. **The** plaintiff concedes that she was away from her employment for a period in excess of twelve weeks. The plaintiff is not entitled to any relief under the FMLA.

An order follows.

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AND NOW, this 12<sup>th</sup> day of July, 2003, upon consideration of the defendants' Motion to Dismiss (Docket No. 3), and the plaintiff's opposition thereto, IT **IS** HEREBY ORDERED that the motion is GRANTED for the reasons set forth in the memorandum of today's date. The plaintiff's claim against defendants Brandywine Hospital, Peter Krech and Edward Albee are dismissed.

BY THE COURT:

  
MARY A. McLAUGHLIN, J.

7/1/03 cc: S. Strutton  
M. Fack