

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

LISA BEFFERT : CIVIL ACTION
: :
v. : :
: :
PENNSYLVANIA DEPARTMENT OF : :
PUBLIC WELFARE, et al. : NO. 05-43

MEMORANDUM

Bartle, C.J.

February 3, 2006

Plaintiff Lisa Beffert brings this action against defendants Pennsylvania Department of Public Welfare ("DPW") and Ron Weaver in his individual capacity.¹ She contends the defendants violated her rights under the Pregnancy Discrimination Act of 1978, 42 U.S.C. § 2000e, et seq., and the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2601, et seq. Before the court is the motion of defendants for summary judgment under Rule 56 of the Federal Rules of Civil Procedure.

I.

Rule 56(c) permits us to grant summary judgment only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show

1. Beffert originally sued the "Commonwealth of Pennsylvania, Department of Public Welfare" and "Allentown State Hospital" in addition to Rob Weaver in his individual capacity. On April 8, 2005 we ordered that the names of the defendants "Commonwealth of Pennsylvania, Department of Public Welfare" and "Allentown State Hospital" be amended to read "Pennsylvania Department of Public Welfare."

that there is no genuine issue as to any material fact and that the moving party is entitled to summary judgment as a matter of law." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); see also Celotex Corp. v. Catrett, 477 U.S. 317 (1986). A dispute is genuine if the evidence is such that a reasonable jury could return a verdict for the non-moving party. See Anderson, at 254. We review all evidence and make all reasonable inferences from the evidence in the light most favorable to the non-movant. See In re Flat Glass Antitrust Litig., 385 F.3d 350, 357 (3d Cir. 2004). The non-moving party may not rest upon mere allegations or denials of the moving party's pleadings but must set forth specific facts showing there is a genuine issue for trial. Lujan v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888 (1990).

II.

The following facts are either undisputed or viewed in the light most favorable to the plaintiff. In July, 2003, Beffert applied to be a storeroom clerk at the Allentown State Hospital ("Hospital"), which is a DPW facility. The Hospital's storeroom consisted of a supervisor and three clerks. Due to her performance during her interview, the Hospital hired her on a six-month probationary basis and she started work on July 28, 2003. Work in the storeroom consisted primarily of moving heavy objects. This included manually lifting up to sixty pounds and loading and unloading vehicles with equipment. Beffert's relationship with the Hospital quickly soured. She took several days of unauthorized leave, and the parties dispute whether she

followed appropriate guidelines regarding the reporting of injuries sustained while on the job.

On December 26, 2003, Beffert learned she was pregnant. Due to the fact that her supervisor, Ron Weaver, was on vacation when she returned to work, Beffert could not meet with him until January 5, 2004. During the meeting, Beffert asked if "light duty" was available. When Weaver responded that it was not, she informed him that she was pregnant and submitted a note from a doctor that restricted her from lifting more than ten pounds.

On January 6, 2004, the day after meeting with Weaver, Beffert brought in a second note from a doctor, which said no weight-lifting restrictions were necessary at that time. That same day she received notice of a disciplinary meeting concerning her alleged failure to follow the Hospital's procedures for reporting previous work place incidents and injuries. After receiving a written reprimand and a performance assessment, Beffert was terminated effective January 21, 2004.

III.

Section 102(a)(1)(D) of the FMLA provides entitlement to up to twelve weeks of leave in a twelve-month period for a serious health condition which prevents a covered employee from performing the functions of her job. 29 U.S.C. § 2612(a)(1)(D). In situations such as a pregnancy, where FMLA leave is foreseeable, an employee must "provide the employer with not less than 30 days' notice, before the date the leave is to begin, of the employee's intention to take leave." Id. §§ 2612(e)(1),

(2)(B). This provision is designed to minimize the disruption to the employer that will be caused by the absence of the employee. See Aubuchon v. Knauf Fiberglass GmbH, 359 F.3d 950, 951 (7th Cir. 2004). Pursuant to the FMLA, the United States Department of Labor has promulgated regulations regarding the content of the notice required to be given to an employer:

An employee shall provide at least verbal notice sufficient to make the employer aware that the employee needs FMLA-qualifying leave, and the anticipated timing and duration of the leave. The employee need not expressly assert rights under the FMLA or even mention the FMLA, but may only state that leave is needed for an expected birth or adoption ...

29 C.F.R. § 825.302(c). Thus, in order to benefit from the protections of the statute, the employee has an affirmative duty to tell the employer, either orally or in writing, not only her need for leave and the reason for it but also the time when she anticipates her leave will begin and when she expects to return to her position. See § 2612(e); § 825.302(c); Woods v. DaimlerChrysler Corp., 409 F.3d 984, 990-91 (8th Cir. 2005) (internal citation omitted). In requesting leave and providing the required information, an employee is not required to mention the FMLA by name or explicitly assert any right under the statute. Babcock v. BellSouth Adver. and Publ'g Corp., 348 F.3d 73, 77 n.5 (4th Cir. 2003) (internal citations omitted); Woods, 409 F.3d at 990; Seaman v. CSPH, Inc., 179 F.3d 297, 302 (5th Cir. 1999).

Beffert claims that by informing Weaver of her pregnancy she gave sufficient notice of her intent to take maternity leave. She maintains that by telling her employer of her pregnancy, she put it on notice that she would need leave to give birth at some time in the future. In her conversation with Weaver, however, she sought "light duty," not leave. Only after being told no "light" work was available did she mention she was pregnant and offer a note from her doctor. She did not advise Weaver how long she had been pregnant or when her baby would be due. Even assuming without deciding that her statement was sufficient to advise her employer that she would not be able to perform the duties of her job at some point in the future, she never informed her employer when or whether she would take leave, or how long it might continue. Plaintiff gave no indication when or even whether she intended to return to work after the baby's birth. The record is void of evidence that she was invoking any right to which she may have been entitled under the FMLA.

In Mullin v. Rochester Manpower, Inc., 204 F. Supp. 2d 556, 562 (W.D.N.Y. 2002), the plaintiff told her employer that she was five-weeks pregnant and she would be due to deliver the following January. In granting the employer's motion for summary judgment, the district court rejected the plaintiff's contention that she had given sufficient notice under the FMLA of her intent to take maternity leave simply by telling her employer that she was pregnant with a due date in January. Id. at 562. The district court observed that there was no proof that the

plaintiff "informed defendants of her intent to either (1) take time off for the birth and recovery, or, (2) return to work following the birth of her second child." Id.

In this case, Beffert said less to her employer than the plaintiff did in Mullin. While an employee's burden under the FMLA is not heavy, plaintiff must do more than she did here when she merely sought light duty at one point and disclosed to her employer she was pregnant. Accordingly, we will grant the defendants' motion for summary judgment on Beffert's FMLA claim.

IV.

Defendants also seeks summary judgment on Beffert's claim for pregnancy discrimination under the Pregnancy Discrimination Act of 1978. We will deny the defendants' motion on this claim because of the existence of genuine issues of material fact.

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ORDER

AND NOW, this 3rd day of February, 2006, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of defendants Pennsylvania Department of Public Welfare and Ron Weaver in his individual capacity for summary judgment pursuant to Rule 56(c) of the Federal Rules of Civil Procedure is GRANTED in part and DENIED in part;

(2) the motion is GRANTED with respect to plaintiff's claim under the Family and Medical Leave Act of 1993;

(3) judgment on the claim under the Family and Medical Leave Act of 1993 is entered in favor of defendants Pennsylvania Department of Public Welfare and Ron Weaver in his individual capacity and against plaintiff Lisa Beffert; and

(4) the motion is DENIED in all other respects because of the existence of genuine issues of material fact.

BY THE COURT:

/s/ Harvey Bartle III

C.J.