

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

AUDREY MINTZ DINTINO : CIVIL ACTION
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: :
v. : :
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: :
DOUBLETREE HOTELS CORPORATION : NO. 96-7772

MEMORANDUM AND ORDER

FULLAM, Sr.J. NOVEMBER , 1997

Currently before the Court are cross-motions for partial summary judgment as to Count III of the plaintiff's Complaint, in which she alleges that the defendant interfered with the exercise of her rights under the Family and Medical Leave Act, 29 U.S.C. §2601 et seq. ("FMLA"). The Court grants the plaintiff's motion for partial summary judgment as to liability, leaving to the jury, at trial, the job of calculating an appropriate measure of damages for violation of the FMLA.

Plaintiff's claim derives from a series of events concerning her pregnancy and leave of absence from employment as Manager of Telemarketing for Doubletree Hotels Corporation ("Doubletree"). In December 1993, the plaintiff had informed her supervisor, Jack Ferguson, of her pregnancy, and on May 23, 1994, informed Ferguson, in writing, of her plans to take a "maternity leave" from July 15, 1994 through October 17, 1994.

Complications developed in the plaintiff's pregnancy, and on June 21, 1994, in accordance with her physician's directions,

plaintiff took an immediate leave from her employment. On the same day, the plaintiff wrote a letter to Ferguson informing him of the complications and stating that "[i]f the condition is resolved after the birth of my child, I intend to take the remaining family leave prior to my return to full-time employment."

Doubletree contends that the plaintiff commenced her 12-week FMLA leave on June 21, 1994 pursuant to 29 U.S.C. §2612(a)(1)(D).¹ The plaintiff, however, claims that the leave she took due to her medical complications was an unpaid medical leave of absence as designated by page 17 of the defendant's "Employee Handbook." Thus, the plaintiff believed that at the expiration of her unpaid medical leave, she would be entitled to FMLA leave pursuant to 29 U.S.C. §2612(a)(1)(A).² The plaintiff expressed this desire in an October 7, 1994 letter to Ferguson that referenced her June 21, 1994 letter. On November 28, 1994, Doubletree notified the plaintiff that by failing to return to work in mid-October, she had abandoned her job.

It is apparent that the plaintiff's motion for partial summary judgment must be granted. First, Doubletree failed to comply with federal regulations, as it did not provide the plaintiff with

¹ Section 2612(a)(1)(D) states: "[A]n eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period . . . [b]ecause of a serious health condition that makes the employee unable to perform the functions of the position of such employee."

² Section 2612(a)(1)(A) states: "[A]n eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period . . . [b]ecause of the birth of a son or daughter of the employee and in order to care for such son or daughter."

notice that the leave she took commencing June 21, 1994, was being counted against her annual FMLA leave. See 58 Fed. Reg. 31794, 31826 (June 4, 1993). As the relevant interim regulation states:

[W]hen an employee provides notice of the need for FMLA leave, the employer shall provide the employee with notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations. Such specific notice should include, as appropriate:

(1) That the leave will be counted against their annual FMLA leave entitlement.

Id. (emphasis added). The interim regulation was replaced by a final regulation in 1995. The final regulation removed the word "should" and replaced it with "must." See 29 C.F.R. §825.301(b)(1)(I) (1995).

Regardless of which version of the regulation should be applied to this case, it is clear that Doubletree failed to meet its responsibilities. The interim and final regulations contained such similar language that Doubletree was on notice of its burden: it had to provide the plaintiff with written notice, and such notice would be expected to include, if applicable, a statement that the plaintiff's leave would be treated as FMLA leave. Additionally, "[i]n all circumstances, it is the employer's responsibility to designate leave, paid or unpaid, as FMLA-qualifying, based on information provided by the employee." 29 C.F.R. §825.208(a)(2). The employee is not required to mention in her notice to her employer that she is taking her leave in accordance with the provisions of the FMLA. Id. Where there is ambiguity in the employee's request for leave, the burden is on the

employer to determine whether the leave is FMLA-qualifying. Id.

Second, it is clear that Doubletree failed to comply with its own written policy concerning FMLA leave. In its FMLA policy, Doubletree laid out specific provisions regarding confirmation of FMLA leave: "After an employee gives notice of intent to take a Family and Medical Leave, the Company will give the employee a memorandum confirming receipt of notice of the leave and setting forth some of the basic employee rights and obligations."

The plaintiff never received a filled-out copy of the confirming memorandum, known as "Appendix 5A." She only received a Request for Leave of Absence form, which made no mention of FMLA leave. This failure to follow corporate policy, coupled with Doubletree's failure to take affirmative steps to discover the type of leave the plaintiff intended to take, as required by 29 C.F.R. §825.208(a)(2), supra, confirms that the plaintiff's leave, which ran from June 21, 1994 through October 7, 1994, was not treated as FMLA leave by Doubletree.

Finally, Ferguson's deposition testimony illustrates that Doubletree did not follow its FMLA policy.³ During his deposition, Ferguson stated that "if [the plaintiff] did not get a copy of the form that she was entitled to, we dropped the ball on that" Further, when asked whether Doubletree had informed the plaintiff that her leave was being counted against her FMLA leave, Ferguson replied, "To the best of my knowledge, . . . , no, it was

³ Ferguson appeared for deposition as Doubletree's corporate agent pursuant to Federal Rule of Civil Procedure 30(b)(6).

considered a maternity leave." An examination of Doubletree's Employee Handbook and FMLA policy reveals that there is a difference between FMLA leave and maternity leave. Ferguson admitted this during his deposition, and further testified that the leaves could be combined to provide an employee with more than 12 weeks of leave.

Plaintiff began her FMLA leave on October 21, 1994, following the conclusion of her maternity leave. As a result, Doubletree's act of terminating plaintiff's employment on November 28, 1994 constituted an interference with the plaintiff's exercise of her FMLA rights, in violation of 29 U.S.C. §2615(a)(1). Because Doubletree cannot establish that it honestly intended to ascertain the dictates of the FMLA and to act in conformance with it, the plaintiff is entitled to seek a liquidated damages award as set forth in 29 U.S.C. §2617(a)(1)(A)(iii). See Morris v. VCW, Inc., No. 95-0737, 1996 WL 740544, at *3 (W.D. Mo. Dec. 26, 1996).

An Order follows.

