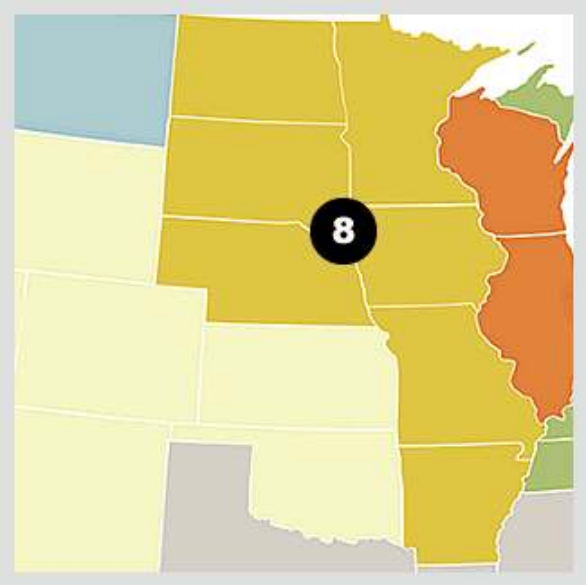
8th Cir.: Inconsistencies Enough to Send FMLA Claims to Trial

By Emily Gelhaus 6/25/2015

Permissions

An employee who notified his supervisor of his absences by text message and not by a telephone call as required by company policy has triable Family and Medical Leave Act (FMLA) interference and discrimination claims, according to the 8th U.S. Circuit Court of Appeals.



Delbert Eugene Hudson worked for Tyson Fresh Meats. The company's attendance policy said, "All management team members are expected to personally call their direct supervisor to report an unplanned absence or to report that they will be late."

On Dec. 28, 2011, Hudson did not come to work due to illness. Hudson's girlfriend, also a Tyson employee, told Hudson's supervisor, Hamdija Beganovic, that Hudson was sick and would be out of work for a few days. Hudson sent a text message to Beganovic before his shift that day explaining that he would be out a few days and needed to see a doctor. Hudson claims he often sent text messages to Beganovic, including notifying Beganovic of an absence on at least one previous occasion.

Hudson was absent for the next few days. Besides the Dec. 28 text message and message relayed by his girlfriend, Hudson did not otherwise notify Tyson of his absences.

On Jan. 3, 2012, Hudson gave Tyson a doctor's note excusing him from work from Dec. 28 through Jan. 7. Hudson signed a leave of absence application which was marked as "non-FMLA" leave. Hudson claims someone else marked "non-FMLA" after he signed the application.

When Hudson returned to work, Tyson terminated his employment because he "failed to notify the company he was going to be absent from work on 12-28, 12-29, 12-30, and 12-31."

Hudson sued Tyson claiming FMLA interference and discrimination. The district court granted summary judgment in favor of Tyson. Hudson appealed.

The 8th Circuit reversed and remanded the case for trial. The court found several factual issues that warranted a trial for Hudson's FMLA discrimination claim, including whether Hudson marked "non-FMLA" on the leave of absence notification, whether Tyson enforced its call-in absence policy, and whether Tyson's explanation for the termination was unworthy of credence. The court explained that Tyson's explanation for the termination shifted—Tyson originally claimed that it fired Hudson for failing to notify the company of his absence but now claims that he failed to notify the company in the correct manner. Notes from Tyson's human resources manager showed that Hudson gave notice for the Dec. 28 absence. Tyson also incorrectly included Dec. 31, a day Hudson was not scheduled to work, on the termination notice.

The court also found a factual issue that warranted a trial for Hudson's FMLA interference claim. Even though Tyson gave Hudson leave and did not fire him until he returned to work, the court found a factual issue of whether Hudson was actually restored from leave before being terminated. Specifically, Hudson claims that Tyson fired him without restoring him to his job after his leave because he was not permitted to work when he returned to work.

Hudson v. Tyson Fresh Meats Inc., 8th Cir., No. 14-1852 (May 22, 2015).

Professional Pointer: Before disciplining an employee, make sure the facts and reasons for the termination are completely accurate. Inconsistencies, no matter how slight, can lead to a trial.

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