

Extension of Leave under Minnesota Law Did Not Also Extend Worker's Reinstatement Rights

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The Minnesota Parenting Leave Act does not provide that "an extension of leave also extends the right to reinstatement," the Minnesota high court has held. *Hansen v. Robert Half Int'l*, 2012 Minn. LEXIS 212 (May 30, 2012). Therefore, the employer did not violate the MPLA by failing to reinstate its employee to her position or a comparable position after her maternity leave, the Supreme Court ruled. In addition, the Court rejected the employee's claim that she was retaliated against for taking maternity leave, in violation of the MPLA; rather, her position was eliminated as a result of a bona fide reduction-in-force. Finally, the Court ruled the employee failed to establish her termination was because of her sex, in violation of the Minnesota Human Rights Act. Accordingly, the Court affirmed summary judgment for the employer on all claims.

Background

Kim Hansen began working in 2004 as a staffing manager in the Minneapolis office of Robert Half International, a staffing company. In the spring of 2007, she became a recruiting manager after another employee resigned. She inherited the resigning employee's book of business, which increased her production numbers. She was promoted to division director around January 1, 2008, and, in addition to her other duties, became responsible for marketing to clients and supervising others on her team.

Soon after the promotion, Hansen's production numbers dipped below expectations and were the lowest on her team. Her supervisor discussed Hansen's underperformance with upper management and the legal department. The number of employees Hansen supervised was reduced, but her personal production numbers continued to decline. She was demoted to recruiting manager and her numbers increased for the second quarter of 2008, though they were still below expectations for someone of her experience. Her supervisor set her a minimum production target, which she failed to attain.

Hansen gave birth to her second child on August 29, 2008, and began her leave of absence. She returned on December 1, 2008. The company sent Hansen a letter dated September 11, 2008, that confirmed her leave as "short-term disability/FMLA" (federal Family and Medical Leave Act) leave, included a copy of the leave of absence manual, advised that she was eligible for up to 12 weeks of "short-term disability/FMLA" leave in a 12-month period, advised that she could request a personal leave of up to four weeks at the conclusion of her "short-term disability/FMLA" leave, and advised that an employee has "no guarantee of job reinstatement" at the "conclusion of a personal leave."

The economic downturn that began in September 2008 severely affected the company's business. Monthly sales decreased by 90 percent in Hansen's department between August and December of 2008. Upper management ordered a reduction in employees on Hansen's team and determined the positions to eliminate by comparing individuals' production numbers for 2008, as well as their relative tenure. Not counting the time she was on maternity leave, Hansen's production numbers were consistently the lowest. Her position was eliminated.

Hansen's supervisor was informed on December 2nd that Hansen's position was eliminated and Hansen was told the same day.

The Suit

Hansen sued the company, asserting violations under Minnesota law. She claimed the employer (1) violated the MPLA by failing to reinstate her to her position or a comparable position after her maternity leave, (2) violated the MPLA by retaliating against her for taking maternity leave, and (3) violated the MHRA by terminating her because of her sex.

The trial court granted the company's motion for summary judgment. It concluded Hansen had no right to reinstatement because the MPLA requires employees to request leave specifically under the MPLA, which Hansen did not do. It also found Hansen was terminated as a result of a bona fide reduction-in-force. In addition, the court determined Hansen's retaliation claim failed because she could not overcome the employer's legitimate non-discriminatory reason (i.e., her performance and a reduction-in-force) for her termination. Finally, the court ruled Hansen failed to establish a *prima facie* case of sex discrimination. The appeals court affirmed the lower court's grant of summary judgment. Hansen appealed.

MPLA Leave

Under the MPLA, "[a]n employer must grant an unpaid leave of absence to an employee who is a natural ... parent in conjunction with the birth ... of a child. The length of the leave shall be determined by the employee, but may not exceed six weeks, unless agreed to by the employer." Minn. Stat. § 181.941, subd. 1.

Need Not Mention MPLA

The Supreme Court found the lower courts incorrectly ruled the MPLA requires an employee to refer specifically to the Act when requesting leave. It is enough, the Court held, that the employee requests leave for one of the reasons specified in the law (i.e., birth or adoption of a child, school conference and activities, or illness or injury of a child).

Right to Reinstatement

"[T]here is no language in the MPLA to suggest that an extension of leave also extends the right to reinstatement," the Supreme Court said. This significant absence of statutory language supports the conclusion the MPLA does not extend the right to reinstatement.

In addition, the Court found the jurisprudence interpreting the FMLA instructive on reinstatement under the MPLA. While the FMLA provides that an employee returning from FMLA leave is entitled to be restored to the same or equivalent position, the Court noted the federal courts have held "an expiration of [FMLA] leave terminates the right to the same or equivalent position." This, the Court determined, supports its conclusion that, absent a specific agreement to reinstatement, an extension of leave under the MPLA does not extend the right to reinstatement.

Hansen's employer stated clearly and unequivocally in its September 11, 2008, letter to Hansen that she would forfeit her right to reinstatement if she extended her leave past 12 weeks. Therefore, the Court concluded, Hansen's right to reinstatement was never extended and the employer did not violate the MPLA.

The Court also found Hansen's position was eliminated as a result of a bona fide reduction-in-force, not retaliation for taking maternity leave, and Hansen failed to establish her termination was because of her sex. Accordingly, the Court affirmed summary judgment for the employer on all claims.

Implications

Hansen is good news for employers. However, while the Minnesota Supreme Court followed federal leave law principles in this interpretation of Minnesota law, it has declined to do so in many other instances (e.g., mixed-

motive terminations, sexual harassment, and waivers and releases of discrimination claims). Employers should consult experienced Minnesota counsel to determine the correct course when dealing with any employment situation. Jackson Lewis attorneys are available to answer inquiries regarding this case and other workplace laws.

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