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2025 MIDWINTER MEETING REPORT OF 2024 CASES

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Plaintiff sued defendant employer, a County in Ohio, under the FMLA. The court granted defendant's Motion for Judgment on the Pleadings on ground that defendant was not a proper FMLA defendant because it was not a "public agency" under FMLA. The FMLA defines a "public agency" who can be sued as the (i) the United States, (ii) government of a state or public subdivision; (iii) an agency of the United States, state or political subdivision; or (iv) an interstate governmental agency.

The court quickly dismissed subsections (i) and (iv) of the definition because defendant is neither the federal government nor does it deal with any interstate issues. The court also held that subsection (iii) did not apply since defendant county was a political subdivision and not an agency. Finally, the court held that defendant did not qualify as the government of a state or public subdivision under subsection (ii) because, while defendant was, as defined by state law, a public subdivision of the state it was in, the definition of employer only applied to the *government* of a public subdivision. That government was the Board of County Commissioners and not defendant county itself.

The court observed that the lack of any mention of a county as an employer under the FMLA supported the fact that a county could not be sued under the FMLA. The court also rejected arguments that cases holding otherwise should control, explaining that those conflicted with its analysis that counties cannot be sued.

***Vasquez v. Univ. of Tex. Health Sci. Ctr.*, 2024 WL 666120 (S.D. Tex. Jan. 25, 2024)**

Plaintiff, a Building Superintendent, brought an employment discrimination action against his employer, a state agency, and his supervisor. Additionally, plaintiff asserted an FMLA retaliation claim against his supervisor for terminating his employment shortly after he returned from FMLA protected leave. Defendants moved for judgment on the pleadings, arguing that plaintiff's claim for FMLA retaliation should be dismissed based on qualified immunity. The Magistrate Judge recommended that the district court deny defendants' motion.

The Magistrate Judge noted that the burden is on plaintiff to overcome the defense of qualified immunity by pleading facts that show a violation of clearly established constitutional or statutory rights. Defendants argued that plaintiff cannot overcome the qualified immunity defense because there is no established law that prohibits an employer from firing an employee for misrepresentation of a vendor's concern to a supervisor, which was defendants' alleged legitimate non-discriminatory reason for terminating plaintiff. However, the Magistrate Judge reasoned that because it is established law that a supervisor can be liable for FMLA retaliation and plaintiff alleged that his supervisor failed to follow the employer's policies and procedures on termination, promoted another employee who engaged in unprofessional communications with vendors, and terminated his employment two days after he returned from FMLA leave, factual development was necessary before plaintiff's claim against his supervisor could be dismissed based on qualified immunity.

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Plaintiff, a senior human resources manager for defendant, requested intermittent FMLA leave to care for her brother who had cancer. Defendant never gave plaintiff a reply but acknowledged the request. However, plaintiff's supervisor became hostile toward her, until he ultimately fired her. Plaintiff filed a complaint in state court against her employer company and its parent company, but the case was removed to federal district court. Plaintiff alleged that defendants violated the FMLA and the New Jersey Family Leave Act. The parent company defendant moved to dismiss the complaint, arguing that it was not plaintiff's employer and thus could not be held liable under the FMLA or the NJFLA. The motion to dismiss was granted without prejudice. Plaintiff then filed an amended complaint that alleged the same claims against the same defendants. The parent company defendant again moved to dismiss.

The district court denied defendant's motion, holding that plaintiff's amended complaint sufficiently alleged that the two defendants were joint employers. Plaintiff alleged that defendants were interrelated, sharing communications between officers and directors and maintaining interrelated human resources operations they shared common ownership and senior management employees, and both exercised direct control over plaintiff's employment. The court reasoned that the amended complaint alleged that defendants had an arrangement to share plaintiff's services, and they were not completely disassociated with respect to plaintiff's employment and may be deemed to share control of plaintiff, directly or indirectly, because one employer controls, is controlled by, or is under common control with the other employer. The court also noted that the NJFLA follows the FMLA.

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***Davis v. El Paso Cnty.*, 2023 WL 7930199 (W.D. Tex. Nov. 16, 2023)**

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***DiPaola v. Aramark Correctional Servs, LLC*, 2024 WL 4265290 (D. Md. Sept. 30, 2024)**

Plaintiff brought suit under the FMLA for failure to restore her to her previous position following her use of leave and retaliation. Plaintiff alleged Aramark and a municipality were her joint employers, with Aramark controlling pay, staffing, and supervising, and the municipality a joint employer with some authority over plaintiff's day-to-day tasks. Plaintiff claimed she provided defendants with all necessary medical documentation regarding her disability and serious health condition, and defendants classified her medical leave as protected under the FMLA. However, while plaintiff was out on leave, defendant replaced her role, and plaintiff was forced to take a different, less desirable position upon returning from leave.

Regarding plaintiff's failure-to restore claim, the court held that because plaintiff's pleadings do not permit a reasonable inference that defendant municipality was her primary employer, she cannot maintain a failure-to-restore claim against the municipality. Therefore, the court granted the municipality's motion to dismiss with respect to plaintiff's failure-to-restore claim.

Regarding plaintiff's retaliation claim, the court held employees may bring retaliation claims against both primary and secondary employers. All joint employers covered under the FMLA are responsible for compliance with the prohibited acts provisions with respect to their jointly employed employees. The court held that plaintiff adequately pled each element of her retaliation claim and dismissed defendant municipality's motion with respect to plaintiff's retaliation claim.

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***Wilkins v. Engineered Plastic Components, Inc.*, 2024 WL 2965592 (N.D. Ala. June 12, 2024)**

Plaintiff was a production supervisor for defendant, a producer of plastic products, having worked for defendant's predecessor company. Plaintiff claimed that defendant terminated her in retaliation for using FMLA leave. Defendant moved for summary judgment, raising three main issues: (1) plaintiff was not eligible for FMLA leave because she had not worked for defendant for twelve months; (2) plaintiff failed to satisfy the notice obligations for foreseeable FMLA leave; and, (3) plaintiff could not establish that defendant's reason for terminating plaintiff was pretextual.

First, the court found that plaintiff could establish twelve-month eligibility. Applying the successor-in-interest factors from 29 C.F.R. § 825.107(a), the court found defendant: (1) bought the previous employer's plant; (2) continued operations much like the previous employer; and, (3) had acted as though plaintiff—who had been eligible for FMLA leave with the predecessor—continued to be eligible for FMLA leave.

Second, the court found that plaintiff failed to satisfy her notice obligations in seeking foreseeable leave for a medical procedure that she could have scheduled in advance. Citing the FMLA notice regulations, 29 C.F.R. § 825.302(c) and (e), the court found that plaintiff should have consulted defendant before scheduling the procedure. But plaintiff scheduled the procedure as a *fait accompli* and thus failed to engage in the required interactive process.

Third, the court found that plaintiff could not establish that defendant's reason for termination was pretextual where: (1) defendant told plaintiff that she would be terminated if she refused to accept a specific position and plaintiff refused and (2) plaintiff's other evidence related to a co-worker's text from five months earlier. The court thus granted summary judgment.

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ELIGIBILITY OF EMPLOYEES FOR LEAVE

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***Connally v. U.S. Dep't of Veterans Affs.*, 2024 WL 1335183 (E.D. Mich. Mar. 28, 2024)**

Plaintiff, a registered nurse, brought suit against her former employer, a Veterans Affairs medical center, claiming that defendant terminated her in retaliation for requesting FMLA leave. Before plaintiff was eligible for FMLA leave, she exhausted her available leave and incurred multiple absences without leave to care for her mother, who had a serious health condition. When plaintiff did not return to work in April 2020, her supervisor requested her termination. Plaintiff then returned to work and did not have any further absences. When she reached twelve months' employment and became eligible for FMLA leave, she requested FMLA leave. She was terminated soon thereafter.

Defendant moved for summary judgment as to plaintiff's FMLA retaliation claim. Plaintiff argued that even though defendant granted her request for FMLA leave, it terminated her three weeks later and cited attendance as the reason for her termination. The district court in Michigan rejected plaintiff's argument, holding that although plaintiff requested FMLA leave as soon as she was eligible for it, defendant had already triggered a summary review process regarding her termination. Plaintiff further argued that defendant hurried to terminate her before she became eligible for FMLA, but the district court cited Sixth Circuit precedent that an employee must be eligible for FMLA leave at the time of their request to have a valid FMLA claim. The district court followed the Sixth Circuit precedent and held that because plaintiff was not an eligible employee under the FMLA, it was not an FMLA protected activity. Therefore, the district court also held that plaintiff had not established a *prima facie* case for FMLA retaliation.

***Guerrero v. Constellation Health Servs., LLC*, 2024 WL 3949293 (E.D.N.Y. Aug. 27, 2024)**

Plaintiff, a registered nurse, learned shortly after starting her employment that she was pregnant, and approximately five months after she had begun working, she notified her employer

of the pregnancy and asked for assistance filing for short-term disability and FMLA leave. Defendant interpreted the request as a letter of resignation. Plaintiff brought suit, alleging *inter alia*, violations of the ADA, Title VII, the PDA, and the New York State Human Rights Law. Plaintiff moved to amend her complaint to include an FMLA retaliation claim.

The district court in the Eastern District of New York, adopted the magistrate judge's report and recommendation, and denied the amendment, finding that, due to the length of her employment being fewer than twelve months, plaintiff was ineligible under the FMLA, and any claim for retaliation under the same would be futile.

***Jackson v. Laurens Cnty. Sch. Dist.*, 707 F. Supp. 3d 1401 (S.D. Ga. 2023)**

Defendant hired plaintiff as a school bus driver. Plaintiff was treated at a hospital for a heart condition and received a doctor's note that he was at heightened risk for COVID-19. Because of his health problems, plaintiff requested to be placed in a different position within the transportation department until the end of the pandemic. Plaintiff did not provide any medical documentation in support of this request. Defendant eventually terminated plaintiff for job abandonment.

Plaintiff alleged, among other claims, FMLA interference and retaliation. The court granted defendant summary judgment because plaintiff was not employed for at least 12 months and was thus ineligible for FMLA benefits. For this reason, plaintiffs' FMLA retaliation claim also failed.

***Lundberg v. Delta Response Team, LLC*, 2024 WL 1676806 (W.D. Va. Apr. 18, 2024)**

Plaintiff was an EMT with Defendant and requested a leave of absence after incidents of harassment based on sexual orientation at work with team members. She brought multiple claims for discrimination, but Plaintiff did not allege that she worked sufficient hours or experienced a qualifying health condition, thus giving the court no basis to sustain her claim for FMLA interference. The trial court dismissed her FMLA claim on summary judgment.

***Sawyers v. McMahon*, 2024 WL 665681 (S.D.N.Y. Jan. 29, 2024), *report and recommendation adopted*, 2024 WL 665205 (S.D.N.Y. Feb. 16, 2024)**

Plaintiff Sawyers and three of his coworkers, *pro se*, sued their employer and its CEO, bringing a hodgepodge of claims, including a claim that Sawyers was denied FMLA leave to care for his seriously ill mother. Defendants moved to dismiss. The magistrate found that plaintiff had not alleged sufficient facts to show that he was an eligible employee under the FMLA because there were no allegations in the complaint regarding how many hours he had worked in the twelve months prior to his request for leave. The magistrate recommended that court dismiss the FMLA interference claim with leave to amend. The district court adopted the magistrate's Report and Recommendation in full.

***Stevens v. Philly Liv Bacon LLC*, 2024 WL 3511411 (E.D. Pa. July 23, 2024)**

Pro se plaintiff sued his employer, a fast-food franchisee, for FMLA interference and retaliation related to his removal from his general manager position, which was communicated to

him when he contacted management about his return date following a period of hospitalization. The district court in Pennsylvania dismissed plaintiff's claims *sua sponte* without prejudice for failure to state a claim because it found that plaintiff had failed to allege facts supporting an inference that he was an eligible employee and that he was entitled to FMLA leave.

III. Measuring 12 Months of Employment

***Brown v. Avanade Inc.*, 2023 WL 8241544 (M.D. Tenn. Nov. 28, 2023)**

Plaintiff, a former manager for defendant, filed suit alleging interference and retaliation under the FMLA. Plaintiff asserts that defendant terminated his employment due to his expressed intent to seek disability or medical leave. The district court granted defendant's motion to dismiss, concluding that plaintiff was not an eligible employee under the FMLA, based on clear Sixth Circuit precedent. FMLA eligibility requires an employee to have been employed by the employer for at least 12 months and work at least 1,250 hours during the preceding 12 months. Defendant argued Plaintiff did not meet the eligibility requirement at the time he requested FMLA leave or on the date his employment was terminated. Plaintiff argued that he would have satisfied the eligibility criteria by the time his FMLA leave was to commence, relying on the implementing regulation: "The determination of whether an employee meets the hours of service requirement and has been employed by the employer for a total of at least 12 months must be made as of the date the FMLA leave is to start." 29 C.F.R. § 825.110(d). The court concluded that because he did not provide a specific date on which the FMLA leave was to begin *after* he became eligible, he failed to establish he was an eligible employee under the FMLA.

***Rodriguez v. Hogar, Inc.*, 2024 WL 86285 (S.D.N.Y. Jan. 3, 2024)**

Plaintiff brought this *pro se* lawsuit against his former employer and three agents of his former employer, alleging discrimination and retaliation. The court granted him leave to file an amended complaint. Among the claims pleaded in his amended complaint, plaintiff alleged that he was terminated for taking sick leave. The court liberally construed this allegation as an FMLA claim. The court dismissed the FMLA claim because plaintiff had worked for his employer for less than 12 months, and thus was not eligible for FMLA leave. Although plaintiff had worked for his employer for more than 30 days, which would have made him eligible for public health emergency FMLA leave, the public health emergency provision of the FLMA expired on December 31, 2020, before plaintiff began working for his employer. The court denied plaintiff leave to amend his complaint further because further amendment would not cure the defects in his amended complaint. Plaintiff appealed to the Second Circuit, which dismissed his appeal because it "lack[ed] an arguable basis either in law or in fact." *Rodriguez v. Hogar, Inc.*, 2024 WL 3559735 (2d Cir. June 27, 2024.)

***Warner v. Hutson*, 2023 WL 6880434 (E.D. La. Oct. 18, 2023)**

Plaintiff, a human resources benefits coordinator who was terminated after taking medical leave less than two months into the job, brought suit in district court for the Eastern District of Louisiana against the sheriff and a human resources compliance director for the sheriff's office, alleging their decision to terminate her violated the FMLA. Defendants moved to dismiss on the basis that plaintiff had not been employed for at least 12 months and therefore was not an eligible

employee under the FMLA. Plaintiff did not oppose defendants' argument. The court agreed with defendants and accordingly dismissed plaintiff's FMLA claim.

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***Jackson v. Laurens Cnty. Sch. Dist.*, 707 F. Supp. 3d 1401 (S.D. Ga. 2023)**

***Mitchell v. County of Chautauqua*, 2024 WL 3276312 (W.D.N.Y. July 1, 2024)**

IV. Measuring 1,250 Hours of Service During the Previous 12 Months

***Hill v. TK Elevator Manuf. Inc.*, 2024 WL 4269776 (E.D. Tex. June 21, 2024)**

Plaintiff, a utility worker for defendant employer, brought a claim against defendant for FMLA retaliation after being terminated for violating the company's attendance policy. Plaintiff was previously terminated for attendance but was later conditionally reinstated through union grievance proceedings. Following her reinstatement, plaintiff had additional absences, some of which she requested FMLA leave pursuant to company policy; for other absences she did not. Human Resources approved plaintiff for intermittent FMLA leave and did not assess occurrences, assuming she would be eligible for FMLA leave. However, the third-party administrator determined she was ineligible for FMLA because she had not worked the FMLA's requisite 1,250 hours in the preceding twelve-month period. Upon learning of her ineligibility, defendant decided to move forward with termination for attendance violations. Defendant moved for summary judgment. The Texas district court granted summary judgment to defendant.

The court found plaintiff to be ineligible for FMLA leave because she had not worked the requisite 1,250 hours in the last twelve months and dismissed her FMLA claim. The court rejected plaintiff's argument that she should have been credited with service hours for the time between her first termination and her reinstatement through the grievance settlement, and instead held that where an employee is terminated and then subsequently reinstated as part of a grievance settlement that did not include an award of back pay, which was the case here, she cannot be credited with the hours she did not work.

***Hill v. Xtreme Solutions, Inc.*, 2024 WL 4103701 (D.D.C. Sept. 6, 2024)**

The court granted defendant's motion to dismiss this *pro se* passport office worker's claims that her termination for chronic absences and tardiness violated the FMLA and ADA and breached an employment contract. After being subject to a series of accusations by defendant, plaintiff submitted a counselor's note requesting medical leave for September 14, 15 and 16, 2022 due to a "toxic work environment." On October 4, 2022, defendant terminated plaintiff's employment, citing 22 absences in the last 60 days and being late/leaving early 27 days of the last 60 days, totaling more than 200 hours of missed work. Plaintiff sued, claiming she was denied her ADA and FMLA rights because she was terminated "while under physician care" and was denied the right to return to work.

The court dismissed plaintiff's FMLA claims because plaintiff's complaint and subsequent filings showed she was not an "eligible employee" at the time she sought FMLA leave, as she had not yet been employed for 12 months as the FMLA requires. The court noted that the limited

exception to this rule, in which an employee announces an intent to take FMLA leave in the future once they become eligible under the statute, did not apply here.

***Morris v. Plymouth Court SNF*, 2024 WL 1348350 (E.D. Mich. 2024)**

Plaintiff sued defendant nursing home after she was terminated for overextending a leave of absence she was taking when she contracted COVID. She sued defendant alleging both interference and retaliation theories under the FMLA. Defendant moved for summary judgment on both claims, arguing that plaintiff did not meet the eligibility requirement of working 1,250 hours in the 12-month period prior to her request. The court granted defendant's motion for summary judgment on the grounds that it was plaintiff's burden to establish a prima facie case under both FMLA theories, and she failed to do so because she provided no evidence that she met the requisite hours to be considered an eligible employee.

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***Paul v. SPB Hosp., LLC*, 2024 WL 4251912 (N.D. Ga. Sept. 3, 2024)**

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CHAPTER 4.

ENTITLEMENT OF EMPLOYEES TO LEAVE

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***Tanner v. Stryker Corp. of Michigan*, 104 F.4th 1278 (11th Cir. 2024)**

Plaintiff brought suit for FMLA interference and retaliation. Plaintiff requested FMLA leave for the birth of his child. The employer approved the leave several weeks before the anticipated due date, and noted the approved leave would not begin until the birth of the child. Defendant required plaintiff to provide notice of the child's birth. Soon after the approval of the leave, plaintiff learned the child's due date would be earlier than anticipated and differed from the FMLA paperwork. He told a supervisor that he was going to be absent the following week because he anticipated that his baby could be born any day in another state. He understood the leave did not start until the birth and planned to use accrued paid time off and sick leave until the birth. Plaintiff used all accrued leave he had available before the birth. Plaintiff then accumulated points under the employer's attendance policy for additional absences. The baby was born, and the employer indicated the employee had job-protected leave beginning with the birth of the baby. Plaintiff attended a meeting with his manager around that same time and was notified that his job had been terminated due to his accumulation points.

Plaintiff claimed his employer interfered with his FMLA leave and retaliated against him for taking FMLA leave. First, the court determined the employee was not entitled to FMLA leave prior to the birth of his child, because nothing in the regulations provides an entitlement to leave before the birth. The interference claim also failed because the employee could not demonstrate he was denied an FMLA benefit.

The court then assumed the employee met his burden to establish a *prima facie* case of retaliation. The employer met its burden of demonstrating employee's termination was due to its attendance policy and accumulation of points by the employee/plaintiff. The employee could not show pretext because the policy did not require warnings before termination and no other facts demonstrated animus regarding FMLA leave.

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***DeJesus v. Bon Secours Cmty. Hosp.*, 2024 WL 554271 (S.D.N.Y. Feb. 12, 2024), reconsideration denied, 2024 WL 1484253 (S.D.N.Y. Apr. 5, 2024)**

Plaintiff, an authorization specialist, brought this action against her former employer, a hospital, and her previous supervisor, asserting retaliation and interference claims in violation of plaintiff's protected FMLA rights. Defendants filed a motion to dismiss plaintiff's complaint. The district court for the Southern District of New York denied defendants' motion as to plaintiff's FMLA retaliation claim, but granted it as to plaintiff's FMLA interference claim.

Defendants argued the retaliation claim failed to plausibly allege a causal connection between her exercise of her FMLA-protected rights and her termination. The court disagreed, finding that plaintiff sufficiently alleged her termination was causally connected to her need for FMLA leave in connection with her second pregnancy. The court found that the short temporal proximity between informing her supervisor of her pregnancy and her termination is sufficient to establish the requisite causal connection between her protected activity and the materially adverse action. Additionally, the court notes the history of animosity that began with plaintiff's first pregnancy announcement as alleged in the amended complaint, supporting an inference that discrimination was a motivating factor in her termination shortly after announcing her second pregnancy.

Defendant argues that plaintiff's FMLA interference claim should be dismissed because she fails to plausibly allege she was denied benefits entitled to her under the FMLA. The court agreed and found that an FMLA-eligible employee may be entitled to protected leave for herself or her family member in relation to COVID-19 when there are serious health concerns that require instances akin to overnight hospitalization or incapacitation arising out of COVID-19 exposure. The court concluded that plaintiff had not sufficiently pleaded her interference claim as she did not have symptoms more severe than had a headache and body ache. Plaintiff alleged a second interference with her right to FMLA leave because defendant did not inform her of her right to take FMLA leave for her second pregnancy or refer her to HR. The court concluded that failure to provide adequate notice of FMLA procedures may constitute FMLA interference only when the lack of notice had caused the employee not to take the FMLA leave, but plaintiff made no allegation suggesting that the lack of notice prevented her from taking the FMLA leave for a second time due to her pregnancy.

***Marrero v. Amazon.com Servs. LLC*, 2024 WL 216280 (S.D. Fla. Jan. 19, 2024)**

Plaintiff was employed by defendant and requested a medical leave of absence to last approximately three weeks for dental surgery. At the time of surgery, plaintiff's physician provided a note to defendant that plaintiff would be ready to return to work in two weeks. But after seeing plaintiff at a follow-up appointment thereafter, the physician wrote on a note plaintiff was still healing, had discomfort, and could not eat. The note's "remarks" section indicated plaintiff would be ready to return to work in an additional three weeks.

Plaintiff called defendant's human resources department to check on the status of her extension, but did not receive a response. Separately, defendant interpreted plaintiff's post-follow up note as indicating a return-to-work date that had passed. So, defendant began the "job abandonment" process, by which it emailed plaintiff information that she needed to return to work, or her position would be forfeited. Plaintiff did not respond to these emails. Ultimately, defendant terminated plaintiff's employment when she failed to appear for work.

Plaintiff filed suit, alleging both interference and retaliation under the FMLA. Defendant sought summary judgment on all counts. Defendant argued plaintiff could not establish FMLA interference because she did not have a serious health condition and could not establish defendant denied her a benefit. Defendant pointed to regulations that "periodontal disease" ordinarily is not a "serious health condition" under the FMLA absent complications. However, the court credited evidence of complications presented by plaintiff—namely that she could not eat and required multiple follow-up appointments. So, the court concluded plaintiff had established a serious health condition. The court also rejected defendant's argument that plaintiff had not been denied a benefit under the FMLA because it provided her initial term of leave. The court recognized plaintiff had requested extensions to her leave, which defendant either failed to grant or otherwise denied. Accordingly, the court denied summary judgment on plaintiff's interference claim.

However, the court granted defendant's motion for summary judgment on plaintiff's claim of retaliation. Plaintiff sought to entirely sidestep the *McDonnell-Douglas* burden-shifting framework under a "mixed-motive" approach. The court declined to sidestep the familiar burden-shifting framework because the mixed-motive framework is not recognized under the Eleventh Circuit's FMLA precedent. Because plaintiff necessarily conceded, for purposes of her mixed-motive theory, that defendants had both legitimate and illegitimate reasons for taking adverse action against her, she could not satisfy the final prong of the *McDonnell-Douglas* framework, requiring proof of pretext. Accordingly, the court granted summary judgment on the FMLA retaliation claim.

***Marshall v. City of Helena-West Helena*, 2024 WL 3260062 (E.D. Ark. July 1, 2024)**

Plaintiff worked for the City's Street and Sanitation Department and fell on the job on June 24, 2020, sustaining injuries to her back. Plaintiff was taken by ambulance to the hospital and released the same day; she was cleared to return to work on June 26, 2020. When she returned to work on June 26, 2020, her employment was terminated immediately by the mayor. Plaintiff brought suit against her former employer and former supervisor alleging retaliation in violation of the FMLA because she was fired when she returned to work following her injury. Defendant moved for summary judgment on plaintiff's retaliation claim.

The court granted summary judgment on plaintiff's retaliation claims, holding that plaintiff could not succeed on an FMLA claim because she did not exercise rights afforded by the FMLA, and she did not establish that she had a serious health condition. Here, plaintiff did not need inpatient care for her injury; she was released from the hospital the same day she arrived. Plaintiff also did not require continuing treatment for her injury; she was cleared to work two days after her injury and the injury did not incapacitate her episodically. The court reasoned that because plaintiff did not exercise rights afforded by the FMLA, she could not establish a claim of retaliation under the FMLA.

***Sims v. W. Valley Elementary Sch.*, 2024 WL 1913689 (D. Utah Apr. 10, 2024), *report and recommendation adopted*, 2024 WL 1912465 (D. Utah May 1, 2024)**

In a suit alleging discrimination and retaliation claims, plaintiff made allegations that could be interpreted as an attempt to state a claim under the FMLA. The district court granted defendant's motion to dismiss after concluding that plaintiff did not allege facts that show she was entitled to FMLA leave. While plaintiff was terminated following an illness that caused her to be absent from work for six weeks, she did not allege she received any inpatient care or continuing treatment by a healthcare provider. Accordingly, she did not meet the foundational requirements to show she was entitled to FMLA leave for a serious health condition.

Summarized elsewhere

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

E. Qualifying Exigency Due to a Call to Military Service

1. Covered Military Members

2. Qualify Exigency

a. Short Notice Deployment

b. Military Events and Related Activities

c. Childcare and School Activities

i. Leave to Arrange for Alternative Childcare

ii. Leave to Provide Childcare on an Urgent Basis

iii. Leave to Enroll in or Transfer to a New School or Daycare Facility

iv. Leave to Attend Meetings with School or Daycare Staff

d. Financial and Legal Arrangements

e. Counseling

f. Rest and Recuperation

g. Post-Deployment Activities

h. Additional Activities

3. Eligible Family Relationships

F. Care for a Covered Servicemember with a Serious Injury or Illness

1. Covered Servicemembers

2. Serious Illness or Injury

3. Eligible Family Relationships

4. Relationship to Leave to Care for a Family Member with a Serious Health Condition

III. Serious Health Condition

***Burns v. Intermodal Cartage Co.*, 2024 WL 1018526 (N.D. Tex. Mar. 8, 2024)**

Plaintiff alleged FMLA interference and retaliation. The district court granted defendant's motion for summary judgment on the FMLA interference claim. To establish such a claim, an individual must demonstrate eligibility for leave due to a serious health condition. Plaintiff failed to fulfill this requirement by not submitting the necessary FMLA paperwork and providing documentation of a serious health condition, despite evidence that his healthcare provider attempted to fax the paperwork to the employer three times, but all attempts failed. Therefore, plaintiff did not establish a prima facie case showing entitlement to FMLA leave.

Additionally, the district court granted defendant's motion for summary judgment on plaintiff's FMLA retaliation claim, finding plaintiff failed to establish the first element of a prima facie case–that he was protected under the FMLA–since he failed to provide the employer with required FMLA paperwork. He also failed to provide any law or evidence in support of the third element–that the adverse action was taken because he sought FMLA protection.

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

Plaintiff was a branch manager for defendant bank. When plaintiff tested positive for COVID-19 while she was at work, although she was not experiencing any symptoms, defendant instructed her to leave the building immediately. Plaintiff became symptomatic while on leave and had at least two telemedicine appointments. While she was out sick, defendant sent plaintiff multiple check-in texts, which pressured plaintiff to return to work. When plaintiff was medically cleared to return to work, she called defendant about returning to work multiple times and left messages each time. Defendant did not respond to her until the day she returned to work. Soon after, plaintiff was terminated and was told that she was "terminated for professionalism" and that she came to work sick and returned to work without approval. Plaintiff filed suit against defendant, asserting claims of retaliation and interference under the FMLA.

Defendant moved to dismiss plaintiff's complaint. As to plaintiff's FMLA retaliation claim, the district court in Connecticut rejected defendant's argument that the claim fails because she "never requested or took FMLA leave and that there were no allegations to support an inference of retaliatory intent. The court first held that plaintiff's allegations that she informed defendant of her symptoms, that she was seeing her healthcare provider for her COVID-19, and that she had at least two telemedicine visits within 30 days of incapacity caused by the COVID-19 infection, were sufficient to suggest that she suffered from a "serious health condition" under the FMLA, but in any event, they are easily enough to plead notice indicating reasonably that the FMLA may apply,

which is all that is required to satisfy the FMLA notice requirement. The court then held that plaintiff's allegations that she was terminated ten days after implementing her FMLA leave was sufficient, at this early stage, to establish the requisite causal connection between her protected activity and her termination.

The court held that the interference claim was duplicative of the retaliation claim because she did not allege that any benefits were interfered with, and thus dismissed the interference claim.

***Eskridge v. Dufresne Spencer Grp. LLC*, 2024 WL 3426774 (N.D. Ill. July 15, 2024)**

Defendant, a company that operates furniture stores throughout the country, mandated that its in-person employees wear masks to work during the COVID-19 pandemic. Plaintiff, a senior sales associate at the furniture company, complied with the policy until January 2021, when anxiety prevented her from continuing to wear a mask to work. After defendant told plaintiff she could not return to work without a mask, denied her request for several months of medical leave, and terminated her employment, plaintiff sued defendant in the district court for the Northern District of Illinois, alleging FMLA interference and retaliation, as well as related ADA claims.

Both parties moved for summary judgment. The district court, considering that plaintiff's condition neither required inpatient care nor continued treatment after she first arguably became incapacitated, found her ineligible for FMLA leave, and granted summary judgment in defendant's favor on plaintiff's interference claim. With respect to the retaliation claim, the district court concluded that no jury could find that plaintiff's termination was because of her FMLA request (or ADA request, or both), rather than because she could not work. The timing of events also could not establish a causal link, even assuming it might be "characterized as suspicious," as the FMLA and ADA requests came more than a week before termination.

***Rogers v. City of Greensboro ABC Bd.*, 2024 WL 3535420 (M.D.N.C. July 24, 2024)**

Plaintiff brought suit against his former employer alleging FMLA interference and retaliation. At summary judgment, defendant argued that plaintiff did not have an FMLA-qualifying condition because he did not obtain follow-up medical care after his initial consultation. The court rejected this argument noting that the FMLA regulations allow for extenuating circumstances that are beyond the employee's control. In this case, plaintiff failure to seek follow-up medical care because he lost his employer-provided health insurance qualified as extenuating circumstances that did not preclude plaintiff's plantar fasciitis from being a qualifying medical condition.

On plaintiff's retaliation claim, the court found a genuine issue of material fact, and sufficient evidence for a jury to conclude that plaintiff's employer retaliated against him for taking FMLA leave, noting that plaintiff was terminated after he informed his supervisor about his medical diagnosis, his employer approved his request to take leave, his employer questioned him about why he did not return from leave earlier, and told plaintiff that if he could not be present on busy days then the employer did not need him.

Summarized elsewhere

***Lundberg v. Delta Response Team, LLC,* 2024 WL 1676806 (W.D. Va. Apr. 18, 2024)**

A. Overview

B. Inpatient Care

C. Continuing Treatment

Summarized elsewhere

***Eskridge v. Dufresne Spencer Grp. LLC*, 2024 WL 3426774 (N.D. Ill. July 15, 2024)**

1. Incapacity for More Than Three Consecutive Calendar Days and Continuing Treatment by a Health Care Provider

***Covington v. Union Memorial Hosp.*, 2024 WL 3784539 (D. Md. Aug. 13, 2024)**

Plaintiff, a hospital chief of security, filed a claim against his employer for FMLA interference, arguing that his termination prior to receiving a decision on his request for FMLA leave violated the law. The district court in Maryland granted summary judgment for defendant, finding that plaintiff failed to establish his claim for FMLA interference. First, the court held that plaintiff failed to show that he was entitled to an FMLA benefit. Although plaintiff proffered medical records demonstrating diagnoses for a number of different medical conditions, the evidence did not reveal that he had a serious health condition entitling him to benefits, as none of these conditions incapacitated him for more than three consecutive days or otherwise rendered him unable to work or perform regular daily activities. And, despite defendant's policy requiring a healthcare provider certification in order to take FMLA leave, plaintiff failed to provide evidence from a healthcare provider demonstrating that leave was recommended or that any treatment was being undergone.

Second, the court held that plaintiff failed to provide adequate notice of his request for FMLA leave by failing to comply with defendant's usual policies and procedures. Although plaintiff notified his supervisor via text message and email that he would be submitting a request for leave, he nevertheless failed to coordinate his leave and the appointment of an interim chief of security with his supervisor prior to making his FMLA request.

Third, the court held that even if plaintiff had been able to establish a prima facie case of interference, defendant presented a legitimate nondiscriminatory reason for the termination that plaintiff failed to rebut. Notably, the FMLA does not prevent an employer from terminating an employee for poor performance, misconduct, or insubordinate behavior. Here, the evidence demonstrated that defendant would have made the same decision to terminate plaintiff absent his FMLA leave request due to his poor performance and attendance problems.

Summarized elsewhere

***Kania v. CHSPSC, LLC*, 2024 WL 3165310 (S.D. W.Va. June 25, 2024)**

a. Incapacity for More than Three Calendar Days

***Lugones v. Ranger Construction Indus., Inc.*, 2024 WL 3841154 (S.D. Fla. Aug. 16, 2024)**

Plaintiff alleged FMLA interference and retaliation after he was injured at work and terminated while recovering. The district court in the Southern District of Florida agreed with the Magistrate Judge's report and recommendation in dismissing his FMLA claims because Plaintiff failed to plead a serious health condition. In the complaint, plaintiff's timeline indicated that he was not incapacitated for more than three consecutive full calendar days, as is required under the regulations to have a serious health condition that requires continuing treatment by a health care provider. Therefore, the court found that plaintiff failed to allege an essential element of the FMLA claims.

b. Continuing Treatment

***Williams v. Westchester Med. Ctr. Health Network*, 2024 WL 990153 (S.D.N.Y. Mar. 7, 2024)**

Plaintiff brought this action under a bevy of state and federal laws, including a claim for interference under the FMLA. The district court granted an early motion to dismiss with leave to replead. Plaintiff filed a Second Amended Complaint (SAC), and defendant renewed its motion to dismiss.

Plaintiff alleged that a car accident led to severe back and neck pain which forced him to miss work for seven days from January 29, 2020 to February 8, 2020. However, the contemporaneous medical records (as alleged in the SAC) reflect an unspecified viral infection, unrelated to the car accident. The first alleged medical treatment regarding plaintiff's back or neck pain is dated February 18, 2020, after the seven days of missed work. Defendant urged that plaintiff failed to adequately allege his status as an FMLA- eligible employee with a "serious health condition" under 29 U.S.C. § 2612(a)(1)(D). The relevant regulation states that a "serious health condition" requires continuing medical treatment, defined as "treatment two or more times, within thirty days of the first day of incapacity…" 29 C.F.R. § 825.115(a). The court held plaintiff failed to allege "two or more" medical visits within this time frame relating to his car accident. The court further held that the doctor's visits relating to a virus were irrelevant because they were not related to the "same condition."

The district court therefore granted the motion to dismiss in full, albeit without prejudice. At some point after the filing of suit, plaintiff's attorney died, and he was unable to find replacement counsel. The district court therefore allowed an additional chance to replead, given the more generous procedural standards governing *pro se* actions.

c. Treatment by a Health Care Provider

2. Pregnancy or Prenatal Care

3. Chronic Serious Health Condition

***Rodriquez v. Se. Pa. Transp. Auth.*, 2023 WL 7222679 (E.D. Pa. Nov. 2, 2023)**

Plaintiff Ephraim Rodriquez sued his former employer for FMLA interference and retaliation after he was terminated for attendance violations. Plaintiff suffered from migraines,

which he treated with over-the-counter medications and home remedies. After his termination, he saw a doctor, who certified that his condition qualified him for FMLA leave.

A jury found for plaintiff on the FMLA interference claim and for defendant on the retaliation claim. Defendant them moved for judgment as a matter of law on the interference claim pursuant to Fed. R. Civ. P. 50(b). The court found that plaintiff did not have a serious chronic health condition, as defined by the FMLA regulations, because he did not see a health care provider for his condition until after his absence. The regulations specifically provide that a condition treated with home remedies does not satisfy the requirements for a serious health condition. The court overturned the jury verdict and granted defendant's motion for judgment as a matter of law. Plaintiff appealed, and the Third Circuit affirmed the district court's ruling. *Rodriquez v. SEPTA*, 119 F.4th 296 (3d Cir. 2024).

Summarized elsewhere

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

4. Permanent or Long-Term Incapacity

5. Multiple Treatments

D. Particular Types of Treatment and Conditions

1. Cosmetic Treatments

2. Treatment for Substance Abuse

3. "Minor" Illnesses

4. Mental Illness

CHAPTER 5.

LENGTH AND SCHEDULING OF LEAVE

I. Overview

II. Length of Leave

***Lewis v. CoreCivic of Tennessee, LLC*, 2024 WL 1333973 (S.D. Cal. Mar. 28, 2024)**

Plaintiff requested FMLA leave, which was granted, but the undisputed facts demonstrated that she was on leave for more than six months. Plaintiff brought suit for FMLA interference, however, the district court granted defendant summary judgment on the claim because plaintiff exhausted her 12 available weeks of FMLA leave..

***Skrine v. City of New York*, 2024 WL 3938004 (E.D.N.Y. Aug. 26, 2024)**

Plaintiff corrections officer sued her employer, the City of New York, for FMLA interference and retaliation related to a series of alleged retaliatory actions following an on-the-job assault, after which, plaintiff went on extended medical leave that well-exceeded 12 weeks.

Defendant filed a motion to dismiss plaintiff's FMLA claim, and the district court granted defendant's motion, finding that plaintiff was fully disabled, unqualified for her position, and unable to pursue an FMLA retaliation claim. The court concluded that because the adverse action alleged by plaintiff occurred at a time when she was unable to return to work and had exhausted the 12 weeks of leave available to her under the FMLA, her claims should be dismissed.

A. General

B. Measuring the 12-Month Period

***Williams v. Kaiser Found. Health Plan of Ga., Inc.*, 2024 WL 1377645 (N.D. Ga. Mar. 31, 2024)**

Plaintiff brought suit under the FMLA, alleging interference and retaliation, among other claims. The magistrate judge recommended granting defendant's motion for summary judgment, which the district court adopted in part and overruled in part.

Defendant utilized a rolling twelve-month period beginning on the date that FMLA leave was first allowed. Here, plaintiff applied for (and received approval for) intermittent FMLA leave in September 2020, with a notification that her twelve-month period ended in September 2021. She *also* applied for FMLA leave in November 2020, which was approved with a twelve-month period ending November 2021. Her request for more leave in September 2021 was then denied, on the basis that her new FMLA period did not begin until November 2021. The court held that this created a triable issue of fact as to whether defendant unlawfully attempted to create a fourteen-month FMLA period, rather than the statutory twelve-month period. The court also found a triable issue of fact regarding plaintiff's alleged failure to provide the necessary information to recertify her leave, as the record suggested that plaintiff did submit medical documentation - meaning it may have been defendant's own internal errors which led to denial of recertification.

The court also denied summary judgment as to the retaliation claims as the two-week time frame from plaintiff's FMLA request, and defendant's decision to place her on leave ultimately leading to her termination, was temporally close enough to create a *prima facie* case. Combined with the "unclear nature" of defendant's representatives' testimony regarding plaintiff's termination, this created a triable issue of fact on the retaliation claims.

C. Special Circumstances Limiting the Leave Period

1. Birth, Adoption, and Foster Care

2. Spouses Employed by the Same Employer

D. Effect of Offer of Alternative Position

E. Required Use of Leave

Summarized elsewhere

***Cowell v. Illinois Dep't of Hum. Servs.*, 2024 WL 551891 (S.D. Ill. Feb. 12, 2024)**

F. Measuring Military Caregiver Leave

III. Intermittent Leaves and Reduced Leave Schedules

A. Entitlement to Take Intermittent Leaves or Leaves on a Reduced Schedule

***Owens v. Dufresne Spencer Group LLC*, 2024 WL 3028470 (N.D. Ill. June 17, 2024)**

Plaintiff brought suit against his employer for, *inter alia*, FMLA interference for using a standard, 40-hour workweek in its calculation to determine the number of intermittent FMLA leave hours to which plaintiff was entitled, instead of using some other method that more accurately reflected his actual schedule of 60-70 hours per week, and FMLA retaliation for terminating him. The Illinois district court denied defendant's motion for summary judgment on the interference claim, explaining that, pursuant to 29 C.F.R. § 825.205(b)(3), where an employee taking intermittent leave does not work a consistent schedule, the proper methodology for determining their entitlement to FMLA leave is to take a weekly average of the hours the employee worked over the previous 12 months. Because plaintiff had worked between 60-70 hours per week in the past 12 months, defendant could not prevail at summary judgment on its argument that it had not interfered with plaintiff's exercise of his FMLA leave by cutting it off at 480 hours—an amount which reflected only a 40-hour work week. Additionally, the court held that defendant's act of cutting plaintiff off at 480 hours was a sufficient denial of FMLA benefits to make out an interference claim. The court further ruled that plaintiff had sufficiently shown prejudice because the evidence in the record showed that plaintiff "would have exercised his FMLA rights differently if he had known that he could be entitled to additional leave."

On the retaliation claim, the court granted summary judgment to defendant for plaintiffs' argument that he had been retaliated against when defendant terminated him, because plaintiff had left work early on April 2, 2022 without properly complying with defendants' internal notice procedures for doing so. As the court explained, even when authorized for FMLA leave, an employee still must comply with internal employer policies related to that leave. Additionally, the court also rejected plaintiff's argument that he had been retaliated against because a meeting had occurred on a day he was out on FMLA leave—the court explained that there was no evidence in the record indicating that the meeting was scheduled on that day *because* plaintiff would be out.

B. Eligibility for and Scheduling of Intermittent Leaves and Leaves on a Reduced Schedule

***Shedden v. Port Auth. of New York & New Jersey*, 2024 WL 278568 (D.N.J. Jan. 25, 2024)**

Plaintiff brought suit alleging FMLA interference and retaliation. Plaintiff was terminated shortly after submitting his application for intermittent parental leave. Under the statute, employees may not take intermittent leave unless the employer agrees to grant to the employee such leave and defendant argued that it never approved plaintiff's request. The district court granted defendants' motion to dismiss, holding that because defendant had never approved plaintiff's intermittent leave request, he was not entitled to such leave and therefore no interference with his FMLA rights occurred.

Plaintiff's retaliation claim similarly failed because he did not establish that he was entitled to FMLA intermittent parental leave. Moreover, the record showed that defendant made the decision to terminate plaintiff for legitimate, performance-based reasons before he informed his supervisors of his intent to take intermittent leave under the FMLA.

Summarized elsewhere

***Crispell v. FCA US LLC*, 2024 WL 3045224 (6th Cir. June 18, 2024)**

C. Measuring Use of Intermittent Leaves and Leaves on a Reduced Schedule

D. Transferring an Employee to an Alternative Position to Accommodate Intermittent Leave or Leave on a Reduced Schedule

1. Standards for Transfer

2. Equivalent Pay and Benefits

3. Limitations on Transfer

E. Making Pay Adjustments

1. FLSA-Exempt Employees Paid on a Salary Basis

2. FLSA-Nonexempt Employees Paid on a Fluctuating Workweek Basis

3. Exception Limited to FMLA Leave

IV. Special Provisions for Instructional Employees of Schools

A. Coverage

B. Duration of Leaves in Covered Schools

C. Leaves Near the End of an Academic Term

CHAPTER 6.

NOTICE AND INFORMATION REQUIREMENTS

I. Overview

II. Employer's Posting and Other General Information Requirements

Summarized elsewhere

***Goines v. City of Ringgold,* 2024 WL 3816651 (N.D. Ga. July 11, 2024)**

A. Posting Requirements

B. Other General Written Notice

C. Consequences of Employer Failure to Comply with General Information Requirements

Summarized elsewhere

***King v. IC Group, Inc.,* 701 F.Supp.3d 1186 (D. Utah 2023)**

III. Notice by Employee of Need for Leave

***Chandler v. Sheriff, Walton Cnty.*, 2023 WL 7297918 (11th Cir. Nov. 6, 2023)**

Plaintiff sued his former employer, the county sheriff, alleging that defendant interfered with his rights under the FMLA and retaliated against him for taking FMLA leave by assigning him to an undesirable station, demoting him, and terminating his employment. The district court granted summary judgment to defendant as to both claims and plaintiff appealed.

First, plaintiff tried to establish a claim of FMLA interference by arguing that defendant ordered a co-worker to visit him while he was on leave. However, the appellate court held that because plaintiff clarified during his deposition that the co-worker did not visit him until after he had already returned from leave, that did not establish a claim of FMLA interference. Plaintiff also argued that defendant interfered with his FMLA rights by not informing him that he could take leave for his mental health. However, the appellate court noted that plaintiff had not requested leave, so that did not trigger defendant's affirmative duty to notify him of his rights under the FMLA. Thus, the appellate court affirmed the district court's decision that plaintiff had not established a claim for FMLA interference.

Second, plaintiff tried to establish a claim for FMLA retaliation. Plaintiff argued that his reassignment to a less favorable station was causally related to his FMLA leave. However, the appellate court noted that the reassignment was planned before his leave, so it could not be causally connected, and it was not an adverse reassignment. Plaintiff also argued that his demotion and termination were in retaliation to his FMLA leave. Although the court agreed that those were adverse employment actions, it held that plaintiff failed to establish a causal connection. The

appellate court held that because plaintiff had been demoted and terminated six months after his return to work by two new supervisors who did not oversee him prior to or during his FMLA leave, there was no causal connection. The appellate court affirmed the district court's decision to grant defendant's motion for summary judgment as to plaintiff's FMLA retaliation and FMLA interference claims.

Summarized elsewhere

***Ayars v. AutoZoners, LLC.*, 2024 WL 167172 (D. Or. Jan. 5, 2024)**

A. Timing of the Notice and Leave

***Lemay v. UCMS, LLC*, 2024 WL 2293162 (M.D. Fla. May 21, 2024)**

Plaintiff, who was pregnant, submitted a notice of FMLA leave to her employer and was fired the next day. Plaintiff brought suit. Plaintiff alleged defendant interfered with her FMLA rights by failing to provide her with notice of her FMLA rights and FMLA retaliation for terminating her employment after she requested FMLA leave.

In response, on plaintiffs' interference claim, defendant argued that plaintiffs' leave request was inadequate and untimely. Numerous disputes of material fact existed including, whether Plaintiffs' need for leave was foreseeable or unforeseeable, necessitating a trial on this claim.

On plaintiffs' retaliation claim, the district court found that defendant could not meet its burden of proffering a legitimate, non-discriminatory motive for the termination decision because it failed to provide any specific reason for why plaintiff was terminated.

***Paul v. SPB Hosp., LLC*, 2024 WL 4251912 (N.D. Ga. Sept. 3, 2024)**

Plaintiff was a server at defendant's restaurant. Plaintiff took 12 weeks' FMLA leave for the birth of a child. A few months after her return to work, plaintiff was in a car accident. The employer provided plaintiff extended leave and provided other accommodations related to plaintiff's restrictions when she returned to work. Approximately one month before plaintiff would have been eligible for FMLA leave, defendant terminated plaintiff's employment. At the time of her termination, plaintiff was not eligible for FMLA leave.

The court determined plaintiff had made a claim for pre-eligibility request for post-eligibility FMLA leave sufficient to survive a motion to dismiss. Relying on Eleventh Circuit precedent, the district court determined that the employee had plausibly alleged interference with the FMLA because she claimed she was terminated so that the employer could avoid having to accommodate FMLA leave rights once the employee was eligible.

Even under this theory, defendant argued plaintiff, in actuality, would not become eligible for FMLA leave but for her termination because she had worked fewer than 1250 hours in the relevant time period and because plaintiff had not given defendant notice of her intent to seek future FMLA leave. The court determined plaintiff had alleged sufficient facts to survive a motion to dismiss on these issues. The court declined to consider defendant's evidence that plaintiff did not work 1250 hours in the relevant time period because at the motion to dismiss phase, the factual

allegations must be taken and true. The court further determined that even though plaintiff did not allege that she expressly told her employer she planned to seek further FMLA leave, she was not required to do so under the law. Instead, an employee is only required to make the employer aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration. Plaintiff alleged she informed defendant she was under the care of a physician and continued to have medical problems requiring restrictions. Thus, plaintiff alleged sufficient facts that she made her employer aware that she may need FMLA qualifying leave.

1. Foreseeable Leave

a. Need for Leave Foreseeable for 30 or More Days

b. Need for Leave Foreseeable for Less Than 30 Days

***Sinico v. Commonwealth*, 2024 WL 510521 (3d Cir. Feb. 9, 2024)**

Plaintiff brought suit alleging FMLA interference and retaliation. Plaintiff took intermittent leave on more than a dozen occasions to receive infertility treatment and other medical care. Shortly before she was terminated, plaintiff told her supervisor she would need to take forty-eight hours off for an embryo transfer and would also need an additional week of light duty to recover. The request was made five days before the requested leave was to start. The day after plaintiff made her request, she asked for two weeks off following the embryo transfer procedure. Plaintiff's employer said he would need her to work during that period because other employees were on vacation, but she could provide a medical note if she needed to take medical leave. Plaintiff never provided the doctor's note. Plaintiff returned to work four days after the embryo transfer and was terminated two weeks later.

The district court granted summary judgment on plaintiff's FMLA claims. First, the court held that plaintiff failed to provide adequate notice because she knew the general timing of the procedure and her need for leave well before she notified her supervisor. Even though she did not know the precise date her transfer would occur, she could have foreseen the approximate timing earlier than when she informed her supervisor about her leave request. Therefore, she did not provide such notice as was practicable under the circumstances. Second, the court analyzed plaintiffs' FMLA retaliation claim under the *McDonnell Douglass* burden-shifting framework and concluded that defendant offered a legitimate justification for terminating plaintiff given longstanding documented performance issues.

The Third Circuit affirmed the district court's order granting defendant's summary judgment on all claims.

2. Unforeseeable Leave

Summarized elsewhere

***Crispell v. FCA US LLC*, 2024 WL 3045224 (6th Cir. June 18, 2024)**

3. Military Family Leave

B. Manner of Providing Notice

***Cerda v. Blue Cube Operations, L.L.C.*, 95 F.4th 996 (5th Cir. 2024)**

Plaintiff, a former employee of defendant, sued defendant for FMLA interference and retaliation, alleging that the time she took off from work to care for her father was FMLA protected leave. Plaintiff left work on her lunch breaks to care for her father, but frequently took longer than the 30 minutes she was allotted. Plaintiff briefly expressed her desire to HR about possibly getting FMLA for her dad, but she never discussed the matter again and instead continued to exceed her allotted lunch break without reporting her absences. After an investigation, defendant terminated plaintiff for earning wages for time she did not work. The district court in the Southern District of Texas granted defendant's motion for summary judgment, holding that plaintiff did not adduce sufficient evidence of each of the elements of her FMLA interference claim and because she did not identify a genuine dispute of material fact with respect to the issue of pretext as to her FMLA retaliation claim.

The appellate court confirmed, rejecting plaintiff's argument that she had given adequate notice of her need or intent to take FMLA leave. Plaintiff claimed her brief conversation with a human resources manager and her supervisor's acknowledgement of the severity of her father's ailments were sufficient notice for her to take additional time away from work beyond her normal 30-minute lunch breaks. The court noted that although an employee does not need to expressly invoke the FMLA, the critical question is whether the information imparted to the employer is sufficient to reasonably apprise it of the employee's request to take time off for a serious health condition.

Additionally, the appellate court held that because plaintiff did not identify a genuine dispute of material fact as related to the issue of pretext, the district court had correctly dismissed her claim for FMLA retaliation. Although plaintiff tried to argue there were several reasons why her former employer's justifications for termination were pretextual, none of those reasons were supported by the record.

***Pryor v. Williamson Cty. Bd. of Educ.*, 2024 WL 3697499 (M.D. Tenn. Aug. 7, 2024)**

Plaintiff sued under Title VII and the FMLA after she was fired from her job as a school bus driver for defendant. Plaintiff alleges that her termination was an act of discrimination against her on the basis of her race (black) and sex (female), as well as retaliation against her for exercising her rights under the FMLA. Plaintiff appeared *pro se*, and defendant filed a motion for summary judgment.

While transporting middle school students on the morning of September 22, 2021, Plaintiff wrote the word COVID backwards on a whiteboard and then directed a nearly 11-minute-long speech toward the students on a range of topics, including sensitive political topics. This occurred over the PA microphone/speaker system on the bus and took place while Plaintiff was driving the bus with one hand on the steering wheel and one hand on the PA handset. Plaintiff refused to sign a written reprimand, and following the complaints of parents, a formal investigation into the incident was opened. Pending the formal investigation, Plaintiff was suspended, and attended a meeting with HR. Plaintiff asserts that, during this meeting, she informed HR of her plan to go out

of town to bring her "sick and elderly parents back to Tennessee." Plaintiff asserts that this is the reason she did not appear during her formal investigation, after which she was fired.

With respect to the FMLA claim, the court found that plaintiff failed to establish a *prima facie* case of FMLA retaliation because plaintiff did not provide the employer with sufficient information for the employer to reasonably conclude the FMLA leave may be implicated. The court held that instead, plaintiff attempted to weave an FMLA claim into her case to further question her termination, because the first mention of her parents occurred after her suspension when the investigation was already in progress. Therefore, the court granted defendant's motion for summary judgment and dismissed the case with prejudice.

Summarized elsewhere

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

***Hubbard v. Illinois Bd. of Educ.*, 2024 WL 3203313 (C.D. Ill. June 27, 2024)**

***Wilkins v. Engineered Plastic Components, Inc.*, 2024 WL 2965592 (N.D. Ala. June 12, 2024)**

C. Content of Notice

***Garland-Gonzalez v. Universal Group, Inc.*, 2024 WL 325657 (1st Cir. July 1, 2024)**

Plaintiff's employment was terminated by defendants, her employer, after she took what she alleged was protected leave under the FMLA to care for her husband, her co-plaintiff. Plaintiffs alleged FMLA interference and retaliation claims against defendants. The district court in Puerto Rico granted defendants' motion for summary judgment and the First Circuit affirmed after reviewing the record *de novo.*

The day before the employee plaintiff's alleged FMLA leave, she emailed her supervisor with the title "Remote work from Florida" and spelled out various work-related tasks plaintiff would complete remotely from Florida. Plaintiff also claimed she told her supervisor she needed to go to Florida because her husband was crying, could not control himself, was feeling anxious, and that he asked her to "get him out of here" so she could take care of him. The court held that plaintiff's email and statement did not adequately notify defendants of a need for FMLA leave. The court reasoned that plaintiff's request was simply for remote work, which defendants granted. Therefore, no reasonable jury could have plausibly inferred that plaintiff requested FMLA leave, especially in light of the fact that plaintiff received her full salary while on the alleged leave and that she had formally requested FMLA leave on two prior, unrelated, occasions. The First Circuit followed the Seventh Circuit's decision in *Taylor-Novotny v. Health All. Med. Plans, Inc.*, 772 F.3d 478, 498 (2014), which explained that a "request for [a remote work] arrangement…was not a request under the FMLA, which requires employers only to provide up to twelve weeks of unpaid leave."

***Hubbard v. Illinois Bd. of Educ.*, 2024 WL 3203313 (C.D. Ill. June 27, 2024)**

Plaintiff, an information technology employee subject to a collective bargaining agreement, was absent from work on ten occasions in December 2019. For each absence, plaintiff notified defendant employer through the department attendance email account that he was sick and would not be in. On the tenth absence, December 26, he noted he would not return until December 30 and attached a return-to work release from his medical provider. The following day his supervisor prepared a "pre-disciplinary meeting memorandum" noting plaintiff's previous discipline for using sick time to attend a concert and a pattern of sick time use issues. On December 30, plaintiff sent an email to the attendance account stating he was still ill and requested FMLA paperwork, which Human Resources sent to him. On January 2, he submitted his completed FMLA paperwork showing he would be incapacitated "12/16-1/6/20." Managers questioned the seriousness of his condition internally, but HR advised that plaintiff met the threshold for the FMLA. On January 8, defendant disciplined plaintiff for failing to notify his immediate supervisor he would be absent January 2 and 3. Defendant then approved his FMLA certification, including FMLA leave from December 16, 2019 to January 15, 2020, but terminated him based on his absences on January 2-3, 2020.

The parties filed cross-motions for summary judgment, both of which the Illinois district court denied. The court held that plaintiff had not met his burden of showing an absence of disputed material facts on his FMLA interference claim, noting that using "sick" or "feeling sick" was too vague to provide a defendant notice of the need for FMLA leave. It also noted that plaintiff's presentation of notes from different physicians was insufficient to provide notice of ongoing care of a specific nature or serious condition considering his history of abusing sick time.

In denying defendant's motion for summary judgment, the court noted that while plaintiff did not notify his direct supervisor he would be absent January 2-3, emails showed he did put defendant on notice of his intent to seek FMLA leave. These included his December 30 email requesting FMLA paperwork and screenshots he submitted of his completed FMLA paperwork. The court also noted there was no evidence that a termination decision had been made before January 2-3 or that he would be fired for any additional unexcused absences. While plaintiff "was still required to follow the usual and customary notice requirements prescribed by the collective bargaining agreement" as to absences, and progressive discipline may have been permissive under that agreement, the lack of direct and uncontested evidence that termination was planned before January 2-3 precluded summary judgment.

Summarized elsewhere

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

***Kania v. CHSPSC, LLC*, 2024 WL 3165310 (S.D. W.Va. June 25, 2024)**

***Pryor v. Williamson Cty. Bd. of Educ.*, 2024 WL 3697499 (M.D. Tenn. Aug. 7, 2024)**

***Ramirez v. Strandco, Inc.*, 2024 WL 2599276 (N.D. Fla. Apr. 30, 2024)**

D. Change of Circumstances

E. Consequences of Employee Failure to Comply with Notice of Need for Leave Requirements

***Monroe v. Rocket Mortgage*, 2024 WL 4288066 (M.D. Fla. Sept. 25, 2024)**

Plaintiff, an underwriter for defendant mortgage company, was granted an unpaid personal leave from May 2021 until August 2021. Before that leave ended, plaintiff asked defendant to extend the leave and told defendant that if his personal leave was not extended, he would involve his medical doctor to request FMLA leave. Defendant informed plaintiff that he could not extend his unpaid personal leave but could have his healthcare provider fill out a "Leave Request Form." Defendant provided plaintiff with such form, but plaintiff never returned it. Instead, plaintiff resigned from his position when his unpaid personal leave ended.

Plaintiff brought suit in the Middle District of Florida alleging interference in violation of the FMLA because defendant did not grant him FMLA leave when his unpaid personal leave ended. Both parties moved for summary judgment; the court granted summary judgment for defendant. The court explained that, to exercise FMLA leave, an employee must satisfy the FMLA's notice requirement as to both timing and content of the notice, and if the need for leave is foreseeable, must give their employer at least 30 days' advance notice. Here, the court reasoned that because plaintiff never returned the "Leave Request Form" provided by defendant, he did not satisfy the notice requirement for exercising FMLA leave. Thus, plaintiff never established that he was entitled to a benefit under the FMLA, which is the first element of an FMLA interference claim. Because plaintiff never established his entitlement to an FMLA benefit, defendant could not have denied that benefit.

***White v. University of Washington*, 2024 WL 1241063 (W.D. Wash. Mar. 22, 2024)**

The pro se plaintiff, a sonographer, brought suit against defendant employer following her termination after her request for a religious accommodation related to a COVID-19 vaccination requirement was denied. The district court granted defendant's motion for judgment on the pleadings and denied plaintiff's motion for leave to amend her pleadings to add an FMLA claim.

Plaintiff sought a religious exemption from a vaccination requirement for healthcare workers, imposed by the State of Washington. Defendant denied the request for an exemption and gave Plaintiff a deadline for compliance, indicating her employment would be terminated if she did not become vaccinated. Plaintiff requested FMLA leave for psychiatric reasons five days before her scheduled termination (based on the vaccine mandate) and one week after her leave began. However, Plaintiff was advised by her psychiatrist to pursue FMLA more than a week earlier than she notified defendant.

The court held that plaintiff's proposed amendment failed to state a claim for relief because she could not establish that she was entitled to FMLA leave when she failed to provide notice of the need for FMLA leave as soon as practicable, and because plaintiff's employment would have ended pursuant to the vaccine mandate anyway.

Summarized elsewhere

***Garland-Gonzalez v. Universal Group, Inc.*, 2024 WL 325657 (1st Cir. July 1, 2024)**

***Crispell v. FCA US LLC,* 2024 WL 3045224 (6th Cir. June 18, 2024)**

Burns v. Intermodal Cartage Co., 2024 WL 1018526 (N.D. Tex. Mar. 8, 2024)

***Covington v. Union Memorial Hosp.,* 2024 WL 3784539 (D. Md. Aug. 13, 2024)**

IV. Employer Response to Employee Notice

***Gerard v. 1199 Nat'l Benefit Funds,* 2024 WL 4188469 (S.D.N.Y. Sept. 13, 2024)**

Plaintiff, a data analyst, sued his former benefit fund employer and its individual HR employees for violating the FMLA and for disability discrimination, arguing argued defendants violated the FMLA by not responding to his request for intermittent FMLA leave and by denying his doctor's 90-day vaccine delay. Defendants announced that all employees needed to be vaccinated against COVID-19 or request an accommodation. During that time period, plaintiff contracted COVID-19 and, due to complications from the infection, his cardiologist informed him not to receive the vaccine for 90 days. Plaintiff emailed HR of his doctors' instructions and requested an accommodation for the vaccine requirement. Plaintiff also requested intermittent FMLA leave due to complications from his COVID infection. HR sent him the relevant forms, which plaintiff submitted. Defendants then requested a medical certification, which plaintiff alleges that he provided. Defendants never formally approved or denied his FMLA leave. Instead, defendants placed plaintiff on employment leave, giving him the opportunity to use sick time, which then converted to unpaid leave for an additional 30 days to allow him to comply with the vaccine policy. Defendants terminated plaintiff when that leave expired, but offered to reinstate him if they received proof of his vaccination. Plaintiff was later vaccinated, but defendants claimed he never provided any proof until the lawsuit was filed. Defendants also stated that they could not consider his FMLA leave request because he was on employment leave, but that if he was reinstated, the FMLA leave would be granted if he needed it.

The district court in the Southern District of New York granted defendants' motion to dismiss, reasoning that plaintiff did not allege any leave he wished to take between the time he requested FMLA leave and when he was placed on leave for not receiving the COVID vaccine, and therefore did not allege any injury from defendants' failure to apprise him of his FMLA eligibility. The court noted that a mere administrative delay in approving FMLA leave does not constitute interference unless plaintiff can show he was harmed and did not take FMLA days because he lacked approval. The court also held that Plaintiff's allegations regarding an extension of time to comply with the vaccine mandate did not raise a claim under the FMLA because the FMLA only provides an employee with the right to go on unpaid leave and that an employer forcing an employee to take leave by itself does not violate the FMLA.

Summarized elsewhere

***Clark v. Marceno,* 2024 WL 3470293 (M.D. Fla. Jul. 19, 2024)**

A. Notice of Eligibility for FMLA Leave

***Goines v. City of Ringgold*, 2024 WL 3816651 (N.D. Ga. July 11, 2024)**

Plaintiff, a former police officer for defendant, alleged, *inter alia*, that defendant terminated him after he took sick leave in violation of the FMLA, failed to provide notice of his FMLA rights, and interfered with his FMLA rights. The magistrate judge in the Northern District of Georgia recommended that defendant's motion to dismiss be granted and the district court judge summarily approved and adopted that recommendation in *Goines v. City of Ringgold*, 2024 WL 4649258 (N.D. Ga. Sept. 5, 2024).

The complaint alleged that plaintiff and his minor son contracted COVID-19. He immediately informed a supervisor and stated that he could not work the next morning. The supervisor told plaintiff the shift would be covered. The next morning, defendant's police chief insisted that plaintiff supply human resources with additional information about taking COVID-19 sick leave without a specific deadline. Plaintiff returned from sick leave on November 30, 2022 and was terminated on May 4, 2023.

The court held that plaintiff's failure to provide FMLA notice claims should be dismissed because plaintiff failed to respond to defendant's motion on that claim and therefore conceded dismissal. The court held further that, even if plaintiff had responded, the complaint contained no specific facts alleging a failure to notify him and no facts alleging that a lack of notice interfered with his leave. The court also found dismissal appropriate because plaintiff was granted leave and the only remedy for an alleged general failure to post notices of employees' FMLA rights is a DOL-imposed fine – meaning plaintiff had no right to sue for alleged § 2619 violations.

The court also dismissed plaintiff's FMLA interference claims, reasoning that the complaint did not allege that defendant denied plaintiff a FMLA-guaranteed benefit nor any recoverable damages because defendant allowed plaintiff to take FMLA leave and an employer's demand for medical documentation does not deny an employee any FMLA rights.

Finally, the court dismissed Plaintiff's FMLA retaliation claims because a five-month period between his FMLA leave and termination was not sufficient to allege the "but for" causation standard established by Eleventh Circuit precedent.

Summarized elsewhere

***DeJesus v. Bon Secours Cmty. Hosp.*, 2024 WL 554271 (S.D.N.Y. Feb. 12, 2024), reconsideration denied, 2024 WL 1484253 (S.D.N.Y. Apr. 5, 2024)**

***Monroe v. Rocket Mortgage*, 2024 WL 4288066 (M.D. Fla. Sept. 25, 2024)**

***Thurston v. W. All. Bank*, 2024 WL 961433 (D. Ariz. Mar. 6, 2024)**

B. Notice of Rights and Responsibilities

Summarized elsewhere

***Goines v. City of Ringgold*, 2024 WL 3816651 (N.D. Ga. July 11, 2024)**

C. Designation of Leave as FMLA Leave

Summarized elsewhere

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

***Gerard v. 1199 Nat'l Benefit Funds*, 2024 WL 4188469 (S.D.N.Y. Sept. 13, 2024)**

***Gugino v. Eerie County*, 2024 WL 3510306 (W.D.N.Y. July 18, 2024)**

D. Consequences of Employer Failure to Comply with Individualized Notice Requirements

***Mitura v. Finco Servs., Inc.*, 712 F.Supp.3d 442 (S.D.N.Y. 2024)**

Plaintiff, the Head of Talent for defendant financial company, was diagnosed with breast cancer and informed defendant's Head of People that she intended to take FMLA leave. Defendant discouraged plaintiff from taking FMLA leave and suggested that she use unlimited PTO instead. Defendant claimed it gave plaintiff six months of leave, but never provided her with FMLA-compliant paperwork. Two weeks before plaintiff was scheduled to return to work, she was terminated, which defendant claims was due to a company-wide layoff. However, when plaintiff asked why she was terminated, she was told that the employees who replaced her while she was leave had been developing relationships during that time, that her salary was too expensive, and the company's cash position had changed. Plaintiff brought claims against defendant for, *inter alia,* FMLA interference and retaliation. Defendant moved to dismiss her complaint.

The New York district court denied defendant's motion to dismiss for both plaintiff's FMLA interference and retaliation claims. For her interference claim, plaintiff argues that she was denied the opportunity to secure her reinstatement rights because defendant dissuaded her from taking FMLA leave, declined to give her FMLA compliant paperwork, and instead encouraged her to use PTO. Because Plaintiff did not undergo surgery until three months into her leave, she claims that she could have made alternative arrangements, such as taking intermittent leave before the surgery, if she had been made aware of her FMLA rights. Drawing all inferences in her favor, the court held that plaintiff had plausibly alleged that defendant's failure to provide her with the necessary information regarding FMLA leave denied her the opportunity to arrange her leave in a way that would have secured her right to reinstatement when she was able to return to work.

For the FMLA retaliation claim, defendant argued that plaintiff's termination was unrelated to her taking FMLA leave and occurred as part of a companywide layoff, but plaintiff counters that defendant admitted that she was chosen for termination because her replacements had built relationships within the company while she was on leave. Although defendants assert that defendant's comments do not establish a causal connection between the protected activity and the termination, the court held that plaintiff's allegations that defendant cited plaintiff's leave as part of the reason for her termination was adequate at the pleading stage to establish a causal connection

between her attempt to take FMLA protected leave, which was categorized as PTO, and an adverse employment action.

***Wilson v. CSX Transportation, Inc.*, 2024 WL 1140898 (M.D. Fla. Mar. 15, 2024)**

Plaintiff Iris Wilson filed this action alleging FMLA violations and race discrimination based on her demotion from Crew Operations Supervisor to crew dispatcher after taking 23 weeks of medical leave in twelve months. Defendant moved for summary judgment.

Plaintiff's first claim for FMLA interference alleged that defendant wrongfully refused job reinstatement by retroactively designating her leave as FMLA time, and failing to timely notify plaintiff of that designation. On review of the summary judgment record, the court found that plaintiff had taken over 23 weeks of leave for three separate medical issues over a twelve-month period. Plaintiff claimed that she relied on the CSXT Medical Leave Policy, which stated that the company would "make every effort to hold a position open for up to 26 weeks" but "may decide to fill an employee's position … [if] business needs warrant." Wilson had been scheduled to return from her third leave on October 1, 2019, after approximately 18 weeks of leave, and only then discovered that her prior leaves had been FMLA-designated. Plaintiff alleged that this retroactive designation was prejudicial, as she could have determined some other treatment option if she had known she was exhausting her FMLA eligibility. The district court disagreed and held that, even giving plaintiff the benefit of the doubt, she failed to show any alternative options which would have allowed her to return to work in less than 12 weeks of total leave. The district court conceded that CSXT did not comply with the FMLA notice requirements, or its own written FMLA policies, but excused these "technical violations" on the basis that plaintiff was not prejudiced.

As to plaintiff's FMLA reinstatement claim, the district court noted that defendant had held her job open for several additional weeks beyond the expiration of the statutory FMLA leave period, yet plaintiff was unable to return to work even with an extended deadline. Plaintiff's role was critical, and plaintiff's continued absence had created a business hardship. Plaintiff did not show any pretext behind the decision to fill her supervisory position, and failed to show that her job could have been performed remotely. Defendant's motion for summary judgment was therefore granted.

1. Eligibility Notice

Summarized elsewhere

***Bess v. Dental Scheduling Ctr. Inc.*, 710 F.Supp.3d 1295 (M.D. Ga. 2023)**

2. Rights and Responsibilities Notice

3. Designation Notice

V. Medical Certification and Other Verification

***Fenton v. Dollar Tree Stores, Inc.*, 2024 WL 4372310 (M.D. Pa. Oct. 2, 2024)**

Plaintiff, a former store manager for defendant, filed suit against her former employer for FMLA interference and retaliation. Plaintiff, whose autistic son required daily care, learned that due to the COVID-19 pandemic and other circumstances, none of her existing care options for her son would be available. After first exhausting her sick and vacation leave, plaintiff sought approval for FMLA leave to care for her son, which was initially approved. Several months into plaintiff's leave, however, defendant's third-party claims service informed plaintiff that she had not submitted the required medical certification and that her FMLA leave request would be denied going forward. Plaintiff did not return the required form and, after her FMLA leave request was denied, she did not return to work and was administratively terminated. The district court in the Middle District of Pennsylvania noted that there was no record evidence that defendant sent plaintiff the required written notice that her documentation was deficient. Several months later, defendant's regional director contacted plaintiff to offer her the opportunity to re-apply, which was withdrawn after plaintiff entered one of defendant's store locations, entered employee-only areas, and issued directions to employees without having first been rehired. Based on these facts, plaintiff asserted that defendant interfered with her ability to take FMLA leave and that she was retaliated against when defendant terminated her and again when defendant refused to rehire her.

Defendant moved for summary judgment, which the court denied in part and granted in part. With respect to plaintiff's interference claim, the court denied summary judgment, concluding that plaintiff had presented a triable issue of material fact with respect to whether defendant had given her the opportunity to cure her deficient medical certification, as required by the Act. With respect to plaintiff's claim of retaliatory termination, however, the court found insufficient evidence that her administrative termination was pretextual, given the period of automatic approval and opportunity to resubmit her medical documentation before she was ultimately terminated. And with respect to plaintiff's claim of retaliatory refusal to rehire, the court found plaintiff had not even presented a prima facie case for retaliation, with the temporal proximity removed and no other evidence connecting the refusal to rehire to her protected activity.

***Jean v. Wal-Mart Assocs., Inc.*, 2024 WL 3949407 (S.D. Fla. Aug. 27, 2024)**

Plaintiff employee filed FMLA interference claims based on defendant's failure to provide information, interference resulting in plaintiff's employment termination, and retaliation, seeking actual damages and liquidated damages. Defendant moved for summary judgment.

Plaintiff suffered a workplace injury which she reported to her supervisor and was referred to defendant's designated workers' compensation medical provider for treatment. The medical provider released plaintiff to work the same day with certain restrictions. Plaintiff, through an interpreter, called defendant's workers' compensation administrator and provided an email address that the workers' compensation administrator could use for future communications with plaintiff. Subsequent emails were sent to the provided email address with information about plaintiff's leave and informing her of the need to report each scheduled day missed through the company's usual call-in procedures. Plaintiff's workers' compensation leave was later converted to an FMLA leave. An email was sent to the provided email address including FMLA documents and advising plaintiff she would be eligible for FMLA upon approval of a completed medical certification. Plaintiff failed to provide the medical certification by the deadline and the leave was denied. In the denial

provided to plaintiff, another opportunity was given to submit the required documentation by May 18, 2023. Still, nothing was received. Between April 26 and May 7, 2023, plaintiff failed to report to work despite continuing to have her regular schedule. Without leave protection, plaintiff's absences resulted in attendance policy violations and plaintiff's employment was terminated on May 18, 2023.

Regarding plaintiff's claim of FMLA interference for failure to provide FMLA information, the Florida district court determined plaintiff abandoned the claim, but nonetheless noted that plaintiff did not deny that she selected the interpreter and that the interpreter provided the email address to defendant. As to plaintiff's claim of interference for her termination, the court stated because plaintiff never provided the completed medical certification form, the leave was not FMLA leave and therefore plaintiff was not entitled to a benefit under the FMLA. On plaintiff's claim of retaliation, the court applied the *McDonnell Douglas* framework and determined plaintiff was not engaged in statutorily protected activity as she never provided the required certification to quality for FMLA leave. Therefore, she did not establish a *prima facie* case of retaliation. Defendant's motions for summary judgment granted on all counts.

Summarized elsewhere

***Bartol v. City of Chattanooga*, 2024 WL 1740337 (E.D. Tenn. Mar. 18, 2024)**

A. Initial Certification

***Crawford v. Bronx Comm. Coll.*, 2024 WL 3898361 (S.D.N.Y. Aug. 21, 2024)**

Plaintiff, a community college office assistant, filed suit against her employer and three individual defendants—her supervisor and two human resources employees—challenging her termination under the FMLA. Plaintiff fell down a flight of stairs at a train station resulting in a broken ankle. Plaintiff alleged that when she notified defendants of her injury, she was provided with FMLA paperwork by a human resources employee along with a fitness for duty certification, but needed to request an extension to complete the forms because she was not able to schedule an appointment with an orthopedist before the initial deadline. Plaintiff ultimately was able to schedule an appointment one day after the extended deadline, and that same day submitted the completed form stating that she was able to return to work with modified duties. Plaintiff also alleged that she had a follow up meeting with a human resources employee a week after her submission to discuss the request for FMLA leave and her return to work, during which she provided defendants with copies of her doctors notes from her initial emergency room visit, but was instructed that her leave was "unauthorized." Plaintiff was then escorted off the property by security guards. Further, plaintiff alleged that in the email transmitting the FMLA paperwork, it was not made clear which forms Plaintiff was required to complete and that such information was not provided until the eventual meeting with human resources. Plaintiff alleged that she immediately provided the forms the same day she was informed that she needed to submit them.

Defendant moved to dismiss plaintiff's FMLA interference claims on the grounds that plaintiff had failed to submit the necessary documents by the deadline in order to be granted FMLA leave, and because plaintiff had not established that the individual defendants are not "employers" for purposes of the FMLA.

The district court for the Southern District of New York denied defendants' motion, and held that plaintiff had alleged sufficient facts to demonstrate that she made "diligent, good faith efforts" to timely submit the necessary FMLA forms based on the allegations in the complaint. The court also held that plaintiff had sufficiently stated a claim for individual liability, which exists where an individual exercises supervisory authority over plaintiff and was responsible in whole or in part for the alleged violation while acting in the employer's interest. Plaintiff alleged that one of the human resources employees provided plaintiff with the FMLA paperwork and set deadlines, granted extensions of the deadlines, informed plaintiff that her failure to submit the paperwork had resulted in her absence being categorized as "unauthorized," directed security officers to escort plaintiff off the premises, and responded to plaintiffs' FMLA emails. Plaintiff alleged that the second human resources employee escorted plaintiff to the meeting about her leave and also sent plaintiff her termination letter. Finally, Plaintiff alleged that her direct supervisor received her initial request for leave and instructed that it had to be cleared by human resources before she began working, and he directed her to meet with human resources when she returned to work. The court held that these allegations as to each individual defendant were sufficient to survive a motion to dismiss on an FMLA interference claim.

***Magwood v. RaceTrac Petroleum, Inc.*, 2024 WL 1254932 (11th Cir. Mar. 25, 2024)**

Plaintiff worked as an engineering assistant for defendant. Plaintiff suffered from stress and anxiety and took leave for approximately six weeks. Defendant reached out to plaintiff to obtain certification immediately upon receiving notice of the intent to take leave, but received no response. Shortly thereafter, defendant sent plaintiff certification paperwork for her FMLA leave, and asked plaintiff to return it within two weeks. Plaintiff struggled to find a provider to complete the certification in that time, so defendant provided her an extension. Ultimately, plaintiff never submitted a completed certification for her self-care FMLA leave. Three days after her return to work, defendant terminated her employment. Plaintiff filed suit alleging interference with and retaliation for the exercise of her FMLA rights.

The district court granted defendant's motion for summary judgment on plaintiff's claims under the FMLA. Because plaintiff never certified her FMLA leave, she failed to present evidence that she exercised a protected right under the FMLA, which was fatal to her FMLA claims. The court held that because plaintiff failed to certify her leave as permitted by the FMLA, what leave she did take was not protected under the auspices of the FMLA. On appeal, the Eleventh Circuit *per curiam*, affirmed the district court's grant of summary judgment to defendant.

Summarized elsewhere

***Tomlinson v. City of Portland*, 2024 UWL 279036 (D. Or. Jan. 25, 2024)**

B. Content of Medical Certification

***Mook v. City of Martinsville*, 2024 WL 2988285 (W.D. Va. June 14, 2024)**

Plaintiff filed suit alleging that his employer had interfered with his exercise of FMLA rights when it directly contacted his mother's medical provider to determine the authenticity of plaintiff's FMLA certification, and then terminated him, determining the form to allegedly be fraudulent. Under 29 C.F.R. § 825.307(a), if an employee submits "a complete and sufficient

certification signed by the health care provider, the employer may not request additional information from the health care provider." However, under 29 C.F.R. § 825.305(c), an employer may contact the health care provider for purposes of clarification and authentication," but only "after the employer has given the employee an opportunity to cure any deficiencies."

Defendant moved to dismiss, arguing that it had been authorized to "investigate" the provenance of the certification without first notifying plaintiff. The court disagreed and denied the motion to dismiss, explaining that 29 C.F.R. § 825.309(c)'s command applies equally to "a fraud investigation or a routine verification screen." In either event, defendant was "required by the regulations to go to [plaintiff] first."

C. Second and Third Opinions

***Lane v. Prairie State Generating Company*, 2023 WL 9002030 (S.D. Ill. Dec. 28, 2023)**

Plaintiff brought suit alleging FMLA interference and retaliation after their request for FMLA leave was denied to care for their spouse. Plaintiff brought a Motion for Protective Order seeking to forbid the disclosure or discovery of their non-party spouse's medical records and deposition. Defendants argued they are entitled to this information because it is directly relevant to whether plaintiff was entitled for leave under the FMLA.

Plaintiff argued that because defendant did not challenge the sufficiency of the medical certification at the time, it is estopped from doing so now. Specifically, plaintiff alleged that defendant did not utilize the statutory procedure for contesting plaintiff's entitlement to FMLA, relying on the "second and third opinion procedure." The Southern District of Illinois noted that the question of whether an employer is estopped from challenging the sufficiency of a medical certification in discovery because it did not do so at the time remains unsettled, and decided that it was premature to decide the legal questions raised by the discovery dispute. Instead, the court found that the discovery fit within the scope of the Federal Rules of Civil Procedure, and therefore, ruled in favor of defendant.

***Perez v. Barrick Goldstrike Mines, Inc.*, 105 F.4th 1222 (9th Cir. 2024)**

Plaintiff, a former employee brought action against employer alleging he was terminated for taking leave under the FMLA and asserting claims for wrongful interference with his FMLA rights. Defendant alleges that plaintiff faked a work injury to take leave under the FMLA. An on-site emergency medical technician who examined plaintiff did not observe any outward signs of injury, and the doctor who examined plaintiff authorized a total of eighteen days off after the alleged accident to allow for follow-up appointments.

Defendant investigated the accident and found no physical evidence, and another employee told defendant that plaintiff "is faking a work-related injury in order to take time off to work on personal business (fixing rental properties)." Defendant also hired a private investigator who observed plaintiff completing renovations on a rental property and observing no signs of pain. Defendant presented this evidence to plaintiff upon his return, and terminated his employment, The case proceeded to a jury trial, where the jury returned a verdict in favor of defendant. Plaintiff alleged the district court erred by failing to instruct the jury that only contrary medical evidence can defeat a doctor's certification of a serious health condition under the FMLA.

The appellate court reviewed the jury instructions de novo for prejudicial error. The court held that the FMLA states that an employer "may require" additional medical opinions when it "has reason to doubt the validity of the [original] certification." It does not require an employer to provide contrary medical evidence if it doubts the validity of the original certification, let alone mandate that an employer must do so in order to challenge the sufficiency of that original certification in court. Though this was an issue of first impression for the Ninth Circuit, the court took the majority view of the other circuits and determined that the language in the statute was permissive, and therefore affirmed the district court's judgment in favor of defendant.

D. Recertification

Summarized elsewhere

***Williams v. Kaiser Found. Health Plan of Ga., Inc.*, 2024 WL 1377645 (N.D. Ga. Mar. 31, 2024)**

E. Fitness-for-Duty Certification

***Jeffords v. Navex Global, Inc.*, 2024 WL 3384223 (9th Cir. July 12, 2024)**

Plaintiff employee appealed an order granting summary judgment to defendant employer on her FMLA interference claim. The court affirmed the Oregon district court's grant of summary judgment.

Plaintiff claimed defendant interfered with her right to return to work following FMLA leave. At the time plaintiff took FMLA leave in December 2019, defendant informed her she would need to submit a fitness-for-duty (FFD) certification in order to return to work. Plaintiff exhausted her FMLA leave and was terminated on March 16, 2020. Plaintiff sent an FFD form to defendant on May 5, 2020, which stated she would be cleared to return to work on June 17, 2020. The court ruled that because defendant had provided notice to plaintiff that she would need to submit the FFD to return to work, and she was not cleared to return by the time her FMLA leave was exhausted, plaintiff failed to show that defendant interfered with her reinstatement.

***Vandervoort v. N. Allegheny Sch. Dist.*, 2024 WL 4436858 (W.D. Pa. Oct. 7, 2024)**

Plaintiff brought suit alleging eleven claims, including FMLA interference and retaliation. Plaintiff asserted these claims against both her employer and the school's Human Resource Director, individually. During the 2021-22 school year, defendant school district required employees to wear masks in light of the COVID-19 pandemic. Plaintiff sought and was granted an FMLA leave associated with situational anxiety brought on by wearing a face covering. When plaintiff exhausted her FMLA entitlement, defendants sought medical documentation that would either release plaintiff to return to work, or documentation to support a leave extension. Despite defendants' multiple attempts to obtain such documentation, plaintiff never provided the information. Eventually, defendant school district terminated plaintiff for job abandonment when she refused to return to work or provide appropriate supporting documentation to extend her leave.

The court granted defendants' motion for summary judgment on all of plaintiffs' claims, including those under the FMLA. The court found no valid basis for an interference claim because

plaintiff received all the FMLA benefits she was entitled to—12 weeks of leave, some of which was paid via concurrent use of paid sick leave. The court declined to allow plaintiff to extend an FMLA interference claim or right to reinstatement beyond the 12-week entitlement period. Plaintiff's retaliation claim failed because there was no evidence to support a causal link between her FMLA leave, which ended on December 8, 2021, and her termination for job abandonment, which occurred on March 23, 2022. Moreover, defendants articulated a legitimate, non-retaliatory reason for plaintiff's termination, and plaintiff was unable to show pretext.

F. Certification for Continuation of Serious Health Condition

G. Certification Related to Military Family Leave

1. Certification of Qualifying Exigency

2. Certification for Military Caregiver Leave

H. Other Verifications and Notices

1. Documentation of Family Relationships

2. Notice of Employee's Intent to Return to Work

***King v. Lazer Spot, Inc.*, 2024 WL 3540400 (S.D. Ohio July 24, 2024)**

Plaintiff, truck driver, sued her employer alleging FMLA interference for refusal to reinstate her employment after the end of her FMLA leave and also constructive discharge and failure to accommodate under the ADA. Plaintiff went on FMLA leave and provided return to work releases from two physicians at the end of her leave. However, defendant refused to permit her to return to work until she submitted other particular medical documentation, which she refused to provide. As such, plaintiff resigned. The court granted summary judgment in favor of plaintiff on her FMLA interference claim, finding plaintiff established a prima facie case of interference, as she provided sufficient documentation under the FMLA to prove she could return to work. The court found defendant's interference did cause plaintiff harm, as she was forced to remain on unpaid leave for two weeks after she provided documentation of her ability to return to work. The court also noted that the employer had a legitimate reason to request further medical documentation regarding her ability to drive, according to its internal policy, but plaintiff successfully rebutted this reason by arguing that the internal policy could not create a more stringent return to work policy than the FMLA.

I. Consequences of Failure to Comply With or Utilize the Certification or Fitness-for-Duty Procedures

1. Employee

Summarized elsewhere

***Jean v. Wal-Mart Assocs., Inc.*, 2024 WL 3949407 (S.D. Fla. Aug. 27, 2024)**

2. Employer

Summarized elsewhere

***Bartol v. City of Chattanooga*, 2024 WL 1740337 (E.D. Tenn. Mar. 18, 2024)**

VI. Recordkeeping Requirements

A. Basic Recordkeeping Requirements

B. What Records Must Be Kept

C. Department of Labor Review of FMLA Records

CHAPTER 7.

PAY AND BENEFITS DURING LEAVE

I. Overview

II. Pay During Leave

A. Generally

Summarized elsewhere

***Mattern v. PKF O'Connor Davies,* 2024 WL 3937751 (E.D.N.Y. Aug. 26, 2024)**

B. When Substitution of Paid Leave is Permitted

***Vander Plaats v. Crisis Prevention Inst., Inc.*, 2024 WL 3897029 (E.D. Wis. Aug. 21, 2024)**

Three plaintiffs brought suit alleging FMLA interference and retaliation claims. Plaintiffs held jobs that required frequent travel and in-person training sessions. Trainers typically traveled for three weeks and then worked a "recharge week" where they performed duties other than travel and training. All trainers were provided with Protected Personal Time Off ("PPTO") which allowed them to select six "protected" recharge weeks when they would not be required to fulfill any duties.

When the COVID-19 pandemic hit, plaintiffs moved into virtual training positions. Eventually, in-person training resumed, but plaintiffs, for various medical reasons, sought to remain in virtual positions. After allowing them to remain in virtual positions for extended periods, defendant instructed plaintiffs to take FMLA leave if their medical conditions prevented them from resuming travel and in-person training. While they were on FMLA leave, defendant denied the use of PPTO concurrent with FMLA leave, arguing they were not eligible for "protected" recharge weeks during leave. Ultimately, each of plaintiffs exhausted their 12-week FMLA entitlements, but none were able to return to work, and defendant terminated their employment. The following year, defendant created and opened training positions that were

primarily virtual but required some travel and in-person training. The three plaintiffs applied, but none were selected for the virtual positions.

The court granted defendant summary judgment on the FMLA interference claims. Plaintiffs argued that defendant violated the FMLA when it denied their request to use PPTO concurrent with FMLA, arguing that the PPTO constituted "accrued paid leave." The court rejected this argument, finding that PPTO weeks had not accrued prior to the FMLA leave. Defendant's PPTO policy permits an employee in plaintiff's position to "protect" three of their recharge weeks during time spent travelling or training, but during their FMLA leave, plaintiffs had no recharge weeks to protect because they were not training or traveling at the time. Likewise, plaintiffs were not entitled to reinstatement once their FMLA entitlement exhausted because they were unable to return to work due to their ongoing medical conditions, eliminating defendant's reinstatement obligation.

The court also rejected plaintiffs' FMLA retaliation claim based on defendant's failure to hire plaintiffs for the virtual positions. Defendant did not hire plaintiffs for those positions because they were not qualified due to the requirement of some travel and in-person training. Plaintiffs did not produce evidence demonstrating that defendant's reason for not hiring them was due to their protected FMLA leaves.

1. Generally

2. Types of Leave

a. Paid Vacation and Personal Leave

b. Paid Sick or Medical Leave

c. Paid Family Leave

d. Workers' Compensation or Temporary Disability Benefits

e. Compensatory Time

C. Limits on the Employer's Right to Require Substitution of Paid Leave

III. Maintenance of Benefits During Leave

A. Maintenance of Group Health Benefits

1. Generally

2. What is a Group Health Plan

3. What Benefits Must Be Provided

4. Payment of Premiums

a. Methods of Payment

i. During Paid Leave

ii. During Unpaid Leave

b. Consequences of Failure to Pay

5. When the Obligation to Maintain Benefits Ceases

a. Layoff or Termination of Employment

b. Employee Notice of Intent Not to Return to Work

c. Employee's Failure to Pay Premiums

d. "Key Employees"

Summarized elsewhere

***Wertheim v. Potter*, 2023 WL 5956991 (M.D. Fla. Sept. 13, 2023)**

e. Other Circumstances

6. Rules Applicable to Multi-Employer Health Plans

B. Employer's Right to Recover Costs of Maintaining Group Health Benefits

1. When an Employer May Do So

2. How an Employer May Do So

C. Continuation of Non-Health Benefits During Leave

1. Generally

2. Non-Health Benefits Continued at Employer's Expense

3. Non-Health Benefits Continued at Employee's Expense

4. Specific Non-Health Benefits

a. Pension and Other Retirement Plans

b. Lodging

c. Holiday Pay

d. Paid Leave

CHAPTER 8.

RESTORATION RIGHTS

I. Overview

II. Restoration to the Same or an Equivalent Position

***Eastmond v. Galkin*, 2024 WL 404498 (E.D. Pa. Feb. 2, 2024)**

Plaintiff worked as the medical director of health for defendant city's department of health. Plaintiff took FMLA leave and, when she returned, was told that she was being reassigned to a different position. Plaintiff then resigned. Plaintiff filed suit against defendant city and here supervisor, individually, alleging, among other claims, FMLA violations for interference, constructive discharge, and retaliation. Defendants moved for summary judgment on all counts, and Plaintiff moved for summary judgment only on the FMLA interference claim.

The district court in the Eastern District of Pennsylvania summary judgment to both parties on the FMLA interference claim. The court noted that an interference claim is not about discrimination, but only about whether the employer provided the employee with the entitlements guaranteed by the FMLA. Here, the parties disagreed over whether the reassignment satisfied the FMLA's requirement that an "employer must restore the employee to the same or equivalent position" upon their return from FMLA leave. Plaintiff claimed the reassignment entailed new duties and responsibilities, but defendant argues that plaintiff's prior job had morphed due to the COVID-19 pandemic and was no longer available, but the reassignment contained the same pay, hours, and benefits. The court held there was a genuine factual dispute on the issue.

As to the FMLA retaliation claim, the court held that plaintiff could not establish a prima facie case because no reasonable jury could conclude the reassignment was an adverse action under the caselaw. The court stated that an adverse employment action is one which is serious and tangible enough to alter an employee's compensation, terms, conditions, or privileges of employment. Although the court acknowledged that the parties disputed how similar the two positions were, to the extent the two roles were different, the court held the reassignment was certainly not detrimental or undesirable in some objective way, especially because the pay, level, and hours remained consistent. Thus, the court granted summary judgment to defendant. Although the court acknowledged tension between the dismissal of the retaliation claim while allowing the interference claim to proceed, the court justified its holding because the standards are different for the two claims.

***Labrice v. City of Philadelphia*, 2024 WL 169657 (E.D. Pa. Jan. 16, 2024)**

Plaintiff, a police officer, sued defendants City, Police Commissioner, and Chief Inspector Captain, alleging that his demotion from Captain to Lieutenant violated the ADA, FMLA, and Pennsylvania state law.

Defendants moved for summary judgment, which the Pennsylvania district court denied as to plaintiffs ADA, FMLA, and state law claims. Plaintiff took unpaid leave, though not explicitly invoking his FMLA right, to recover from a temporary disability. When he returned to work he

found himself at a lower rank and in a different department with higher scrutiny. The demotion paperwork was processed while plaintiff was on leave, but he was not reassigned or informed of the demotion until approximately one month after his return from leave. Defendants explicitly stated that plaintiff's demotion was in part because of his use of leave time. For his FMLA interference claim, plaintiff alleges he was not reinstated to his prior position upon his return. The court found that because there was a dispute regarding the date of his demotion, factual questions existed that prevented summary judgment.

For his discrimination and retaliation claims, plaintiff alleges that he was discriminated and retaliated against because he used FMLA-qualifying leave time. The court held that plaintiff sufficiently established a prima facie case. because Plaintiff invoked an FMLA right by taking unpaid leave, suffered an adverse employment action when he was demoted from captain, and defendant explicitly cited his use of leave time in the demotion paperwork, there was a genuine dispute of material fact about whether he was terminated due to his use of FMLA leave time.

***Toulatos v. Qwest Corp.*, 2024 WL 4279095 (D. Utah Sept. 24, 2024)**

Plaintiff, an inside relationship manager, sued employer defendant alleging FMLA retaliation. Plaintiff alleged that defendant retaliated against her for taking four weeks of FMLA leave and failing to return her to the same or similar position. The district court ruled in favor of defendant at summary judgment. The court found that plaintiff was returned to a similar position after her FMLA leave and that it was plaintiff's own decision not to collaborate with her coworkers that led to her belief that she did not have the same workload.

Summarized elsewhere

***Hutty v. PNC Bank, N.A.*, 2024 WL 1014080 (D. Md. Mar. 8, 2024)**

A. General

B. Components of an Equivalent Position

Summarized elsewhere

***Bartol v. City of Chattanooga*, 2024 WL 1740337 (E.D. Tenn. Mar. 18, 2024)**

***Eastmond v. Galkin*, 2024 WL 404498 (E.D. Pa. Feb. 2, 2024)**

1. Equivalent Pay

2. Equivalent Benefits

3. Equivalent Terms and Conditions of Employment

III. Circumstances Affecting Restoration Rights

A. Events Unrelated to Leave

***Leach v. Specialty Hosp., LLC*, 2023 WL 8719439 (E.D. Tex. Dec. 18, 2023)**

While plaintiff was on FMLA maternity leave, defendant demoted her from a director of nursing position. Plaintiff brought FMLA interference and retaliation claims against Defendant. The evidence was disputed as to whether such a demotion was in the works prior to her FMLA leave and whether it would have occurred without her taking FMLA leave. Given the disputes of material fact, the district court denied Defendant's motion for summary judgment as to Plaintiff's FMLA interference claim. However, the court granted the motion as to the FMLA retaliation claim because plaintiff did not identify facts in the summary-judgment record that would allow a reasonable inference that defendant's stated reason for the demotion is pretextual.

1. Burden of Proof

2. Layoff

Summarized elsewhere

***Mitura v. Finco Servs., Inc.*, 712 F.Supp.3d 442 (S.D.N.Y. 2024)**

***Clark v. Marceno,* 2024 WL 3470293 (M.D. Fla. Jul. 19, 2024)**

***Lutz v. Mario Sinacola & Sons Excavating Inc.,* 2024 WL 666071 (N.D. Tex. Feb. 16, 2024)**

***Wolf v. St. Anthony Hosp.,* 2023 WL 7631015 (N.D. Ill. Nov. 14, 2023)**

3. Discharge Due to Performance Issues

***Baker v. Rock Region Metro. Transit Auth.*, 2023 WL 8257974 (E.D. Ark. Nov. 29, 2023)**

Plaintiff was employed by defendant as a bus driver. Between October 2020 and July 2021, plaintiff was disciplined five separate times for violating defendant's policies by operating a bus while not wearing a seatbelt. Each disciplinary measure was progressively more severe and in line with the collective bargaining agreement between defendant and plaintiff's union. Plaintiff argued that he should not have been required to wear a seatbelt because they were defective and could cause him to be injured if attacked by a passenger. Ultimately, plaintiff was terminated because of his violations of the seatbelt policy.

Plaintiff claimed defendant interfered with his exercise of his FMLA rights by terminating his employment while he was on FMLA leave. Plaintiff took intermittent FMLA leave starting in 2021. Defendant approved all of plaintiff's lawful requests for FMLA leave. The court noted that plaintiff could not use FMLA leave as a shield against lawful discharge. Finding no reason to infer that defendant violated the FMLA, the court granted defendant's motion for summary judgment on the FMLA claim.

***Blockhus v. United Airlines, Inc.*, 2024 WL 4234658 (7th Cir. Sept. 19, 2024)**

Plaintiff, a flight attendant for defendant, was accused by a coworker and former romantic partner of sending threatening text messages and voicemails in violation of defendant's workplace

guidelines. Defendant opened an investigation into the messages, but just before the investigatory meeting, plaintiff requested and was approved to take FMLA leave to attend rehabilitation for alcoholism. While plaintiff was on leave, defendant completed its investigation and concluded that plaintiff had violated defendants' policies, and terminated him.

Plaintiff brought suit against defendant alleging that defendant interfered with his right to take medical leave. The district court for the Northern District of Illinois granted summary judgment for defendant finding that defendant had provided evidence that plaintiff would have been fired for workplace violations regardless of his leave status and there was no evidence from which a reasonable jury could conclude that plaintiff was terminated for exercising his FMLA rights. Plaintiff appealed.

The Seventh Circuit affirmed the district court's decision and agreed that it was the result of the investigation, not plaintiff's FMLA leave that led to his termination.

***McBeath v. City of Indianapolis*, 2024 WL 1885849 (S.D. Ind. Apr. 29, 2024)**

Plaintiff brought suit against her former employer alleging FMLA retaliation, FMLA interference, and discrimination under Title VII based on defendant employer's decision to terminate her. Defendant terminated plaintiff's employment after an investigation determined that she had violated various policies by taking food donated to defendant's food pantry to her home, by having her husband ride as a passenger in defendant-owned vehicle, and because plaintiff had several instances of prior discipline. After the investigation but before she was terminated, plaintiff requested and was approved for FMLA leave. Although plaintiff's supervisor knew about the need for leave earlier the initial complaint that led to the investigation pre-dated the supervisor's knowledge of plaintiff's need for FMLA leave. The Indiana district court granted summary judgment to defendant.

For the interference claim, the court held that plaintiff was not denied FMLA benefits to which she was entitled because the employer provided substantial evidence that plaintiff was not entitled to return to her job after the FMLA leave due to her termination. For the retaliation claim, the court held that plaintiff could not show that her exercise of rights under the FMLA played a role in the employer's reason for termination because the investigation took place before the request for FMLA leave.

***Persons v. Pulaski County*, 2023 WL 8877941 (E.D. Ark. Dec. 22, 2023)**

Plaintiff sued defendant for interfering with her right to FMLA leave and retaliating against her by terminating her employment while on FMLA leave. Defendant filed a motion for summary judgment on all claims. The court first addressed the interference claim finding that any termination while on FMLA leave interferes with an employee's FMLA rights. For that reason, the court refused to grant defendant's motion and left for a jury to decide if defendant would have dismissed plaintiff regardless of her taking leave. The court then turned to the retaliation claim and again found that a jury should decide whether plaintiff's termination while on leave was retaliation for her taking leave, which was protected conduct. The court found that a jury might find the performance allegations that resulted in plaintiff's termination to be pretext and her termination was causally linked to her FMLA leave.

***Pezza v. Middletown Township Public Schools*, 2023 WL 8254431, (D.N.J. Nov. 29, 2023)**

Plaintiff, a school paraprofessional, sued the school district and several school personnel, asserting FMLA interference and retaliation. After discovery, the parties filed cross motions for summary judgment. The employer argued poor performance, which plaintiff argued was pretextual. The court held that the employer put forth significant evidence demonstrating plaintiff's poor performance. The court granted defendants' motions and denied plaintiff's, finding the employer demonstrated that plaintiff would have been laid off during her FMLA leave period, regardless of plaintiff's FMLA leave, and the employer had granted plaintiff's requests for FMLA leave and related extensions. With respect to plaintiff's claim for FMLA retaliation, the court found plaintiff was not immune from termination because of her protected status so long as the employer's reason for termination is unrelated to the leave.

4. Other

B. No-Fault Attendance Policies

C. Employee Actions Related to the Leave

1. Other Employment

2. Other Activities During the Leave

***Paterakos v. City of Chicago*, 2024 WL 1614991 (N.D. Ill. Mar. 11, 2024)**

Plaintiff sued defendant, alleging that she received a five-day suspension that interfered with her FMLA rights and in retaliation for her exercising her FMLA rights. Defendant filed a motion for summary judgment on both claims, alleging it imposed the suspension because it had an honest belief that plaintiff was abusing FMLA leave. She had been approved for intermittent leave to care for her parents, and records show she was designating time as intermittent FMLA leave when she was standing outside of City Hall talking on her cell phone or to police officers, activities that did not appear to be related to the care of a family member. The court found that plaintiff presented no evidence that defendant did not genuinely suspect FMLA abuse. In addition, plaintiff could not rebut witness statements that saw her outside city hall at times she was supposed to be on FMLA leave. The court found that plaintiff could not establish an interference or retaliation claim based on her five-day suspension. Plaintiff also alleged interference because of the heightened scrutiny of her use of FMLA leave, she felt dissuaded from and chose not to apply for leave in another circumstance in 2022. The court rejected this argument because there was no evidence that defendant knew of this need for FMLA leave. For these reasons, the court granted defendant's motion for summary judgment on these claims.

***Porter v. Jackson Township Hwy. Dept.*, 2024 WL 2188261 (N.D. Ohio May 15, 2024)**

Plaintiff brought suit claiming FMLA interference and retaliation, among other claims. The district court granted defendants' motion for summary judgment. Plaintiff was a public works analyst., a position which required manual labor, including using power tools, digging ditches, and using sledgehammers, picks or air hammers to dig up pavement. Plaintiff injured his shoulder while not at work, requiring surgery and time off from work. He began FMLA

leave on the date of surgery. Following surgery, the treating doctor wrote that plaintiff was "totally disabled" and unable to return to work. Later into plaintiff's FMLA leave, the doctor stated plaintiff could return to "light duty" assignments. Defendants informed plaintiff there were no "light duty" assignments within the public works department, so he remained on leave without pay to continue the recovery period. When plaintiff's FMLA leave balance was exhausted, defendants required him to use vacation time, followed by unpaid leave of absence. During the unpaid leave of absence, defendants learned, and later confirmed with a private investigator, that plaintiff may have been conducting manual labor construction activities while on leave.

The court dismissed Plaintiff's claim for FMLA interference, as he failed to establish that defendants denied any of the requested leaves or refused to reinstate plaintiff; therefore, no FMLA leave benefit was denied. Next, the court dismissed plaintiff's FMLA retaliation claim, finding no evidence that defendants interfered with reinstatement following use of FMLA leave. The court found defendants produced a legitimate, nondiscriminatory reason for terminating plaintiff – falsification of requests for medical leave – and plaintiff proffered no evidence to defeat defendant's "honest belief."

Summarized elsewhere

***Perez v. Barrick Goldstrike Mines, Inc.*, 105 F.4th 1222 (9th Cir. 2024)**

3. Reports by Employee

4. Compliance With Employer Requests for Fitness-for-Duty Certifications

5. Fraud

Summarized elsewhere

***Paterakos v. City of Chicago*, 2024 WL 1614991 (N.D. Ill. Mar. 11, 2024)**

D. Timing of Restoration

IV. Inability to Return to Work Within 12 Weeks

***Carillo v. Wildlife Conserve Soc.*, 2024 WL 4225555 (E.D.N.Y. Sept. 18, 2024)**

Plaintiff, a Security/Admissions Supervisor at a zoo, brought suit under several federal and state laws, including the FMLA. Plaintiff's complaint alleged that she injured her foot and knee during a company event that resulted in surgery which would take up to six months for recovery. Plaintiff took FMLA leave beginning in January 2023. The complaint alleged that plaintiff requested to return to work with her crutches in February 2023, but defendant denied the request unless she could return to full duty employment. A doctor instructed plaintiff to not return to full duty work until May 24, 2023. On May 4, 2023, defendant informed plaintiff that it was filling her position. Plaintiff attempted to get her job back, but was told that she could not perform the essential functions of her job and was terminated.

Defendant moved to dismiss all plaintiff's claims, including the FMLA interference and retaliation claims. The district court for the Eastern District of New York held that plaintiff failed to state a claim for interference because she was granted FMLA leave and had exhausted her FMLA-protected leave by the time any adverse action occurred. Thus, she was not entitled to reinstatement under the FMLA. However, the court held that plaintiff sufficiently alleged a FMLA retaliation claim because plaintiff needs only to show that her FMLA leave was a "motivating factor" in the termination decision. Because the complaint alleged that defendant had used plaintiff's inability to "run" or "pick up a bag of quarters" as the basis for its refusal to reconsider her termination, even though those tasks were not part of her job duties, she sufficiently alleged a retaliation claim.

***Hester v. Osage Landfill, Inc.*, 2024 WL 101854 (N.D. Okla. Jan. 9, 2024)**

Plaintiff brought claims against his employer for FMLA interference and retaliation. The employee took twelve weeks of FMLA leave due to elevated blood pressure. After the twelve weeks expired, the employee was not medically cleared to return to work. When the employee refused to resign after his supervisor allegedly called and pressured him to return to work because his absence put the supervisor "in a bind," the employer terminated his employment. Plaintiff alleged that, instead of terminating him, the employer should have provided a reasonable accommodation in the form of light duty or additional medical leave so that he could get his blood pressure under control. The Oklahoma district court dismissed both the FMLA interference and retaliation claims with prejudice.

On the interference claim, the court found the employee failed to state a plausible claim because: a) he received twelve weeks of FMLA leave; b) the FMLA permits termination when an employee cannot return to work after exhausting leave; and c) the employee did not allege he was prevented from taking full FMLA leave or denied reinstatement while still eligible. Because the employee received all twelve weeks to which he was entitled under the FMLA, and he was unable to return to work at the end of his leave, his claim for FMLA interference failed.

On the retaliation claim, the court found the employee: a) did not respond to defendant's arguments, appearing to abandon the claim; and b) did not allege he was restored to his job and then faced adverse action after returning from leave. The court explained that FMLA retaliation claims typically involve adverse actions after an employee returns from leave. Further, the court noted that after FMLA leave expires, an employee's rights depend on the employer's policies rather than FMLA protections.

***Stevenson v. Kroger Co. of Mich.*, 2024 WL 625211 (E.D. Mich. Feb. 14, 2024)**

Plaintiff worked for defendant as a produce clerk. After plaintiff notified defendant that she was unable to work due to injuries from a car accident, defendant advised her to obtain FMLA leave. Plaintiff reached out to the third-party disability administrator who instructed plaintiff to fill out claim forms. When a month passed and the administrator failed to receive the forms, plaintiff was deemed absent from work without authorization and terminated. When plaintiff learned of this termination, she sent the medical records to the administrator, who approved her leave request three months after her termination. Plaintiff then brought suit alleging FMLA interference and retaliation. Defendant moved for summary judgment.

On interference, the court entered summary judgment for defendant because plaintiff remained unable to work well past the 12-week covered period. On retaliation, the court found that plaintiff could not proffer evidence in support of her prima facie case, and granted summary judgment on that claim as well.

***Wolf v. St. Anthony Hosp.*, 2023 WL 7631015 (N.D. Ill. Nov. 14, 2023)**

A former Chief Human Resources officer for a hospital sued her former employer alleging interference and retaliation under the FMLA. Plaintiff exhausted her twelve weeks of FMLA leave but was medically unable to return at the conclusion of the leave. During her leave, defendant also initiated a reduction in force, eliminating several employees, due to a financial crisis brought on by the COVID-19 pandemic. Defendant eliminated plaintiff's position as part of the reduction in force and notified her on the last day of her FMLA leave.

A district court in Illinois granted defendant's motion for summary judgment as to plaintiff's interference claims because, given plaintiffs' inability to return following the exhaustion of her FMLA leave, she was not entitled to reinstatement. The court also granted summary judgment as to plaintiff's retaliation claim because plaintiff could not establish a discriminatory motive on defendant's part in relation to its decision to terminate her, where defendant was able to show significant financial distress motivated its decision to terminate plaintiff and several other employees. Further, as plaintiff was unable to return to work following the exhaustion of her FMLA leave, she was not entitled to reinstatement and therefore incurred no damages from defendant's decision to terminate her employment.

Summarized elsewhere

***Duncan v. North Broward Hosp. Dist.*, 2024 WL 962357 (S.D. Fla. 2024)**

***Jeffords v. Navex Global, Inc.*, 2024 WL 3384223 (9th Cir. July 12, 2024)**

***Tieu v. New York City Econ. Dev. Corp.*, 717 F. Supp. 3d 305 (S.D.N.Y. 2024)**

***Vander Plaats v. Crisis Prevention Inst., Inc.*, 2024 WL 3897029 (E.D. Wis. Aug. 21, 2024)**

***Wilson v. CSX Transportation, Inc.*, 2024 WL 1140898 (M.D. Fla. Mar. 15, 2024)**

V. Special Categories of Employees

A. Employees of Schools

B. Key Employees

1. Qualifications to Be Classified as a Key Employee

2. Standard for Denying Restoration

3. Required Notices to Key Employees

a. Notice of Qualification

b. Notice of Intent to Deny Restoration

c. Employee Opportunity to Request Restoration

CHAPTER 9.

INTERRELATIONSHIP WITH OTHER LAWS, EMPLOYER PRACTICES, AND COLLECTIVE BARGAINING AGREEMENTS

I. Overview

II. Interrelationship with Laws

A. General Principles

B. Federal Laws

1. Americans with Disabilities Act

***Hunt v. Thorp*, No. 23-3459, 2024 WL 1159323 (6th Cir. Mar. 18, 2024)**

Plaintiff, who had bipolar disorder, worked as a dispatcher for defendant. She transferred to a position within the department that only required her to enter data, however, at the outbreak of COVID she was required to dispatch again. Plaintiff took FMLA leave because she experienced a bipolar episode triggered by conditions in the workplace related to the pandemic. Plaintiff told defendant that she was ready to return to work but could only perform data entry duties. The only available positions required dispatching duties. Plaintiff eventually filed for unemployment compensation and defendant, believing she abandoned her position, terminated her employment.

The Sixth Circuit affirmed the district court's holding that dispatch duties were an essential function of plaintiff's position as a Dispatcher-Data Entry Specialist and therefore, she was not a qualified individual under the ADA and not entitled to ADA or related FMLA protections. The court held that the district court correctly determined that plaintiff was not a qualified individual under the ADA because she could not perform all the essential functions of her position with or without reasonable accommodation. Plaintiff's FMLA interference claim also failed because the court held she was unable to perform the essential functions of her job.

Summarized elsewhere

***Herda v. Centene Corporation*, 2024 WL 68231 (E.D. Mo. Jan. 5, 2024)**

a. General Principles

b. Covered Employers and Eligible Employees

***Webb v. Playmonster, LLC*, 2024 WL 1675062 (W.D. Wis. April 18, 2024)**

Plaintiff, an accounts receivable clerk, alleged that defendant employer fired her shortly after plaintiff gave notice of her pregnancy because defendant did not want to give maternity leave,

in violation of the FMLA. The district court granted default judgment for plaintiff after defendant failed to answer the complaint and failed to appear for a hearing on plaintiff's motion for default judgment.

The court held that the relevant time frame under the FMLA for counting whether there were 50 or more employees within 75 miles of plaintiff's worksite was the year of and the year before the alleged FMLA violation occurred. The court also held that terminating plaintiff to avoid her becoming FMLA eligible constituted interference with plaintiff's FMLA rights. The court awarded back pay, prejudgment interest, and liquidated damages, and held that prejudgment interest on back wages would be based on the average federal prime rate.

Summarized elsewhere

***Hunt v. Thorp,* No. 23-3459, 2024 WL 1159323 (6th Cir. Mar. 18, 2024)**

c. Qualifying Events

i. Serious Health Conditions and Disabilities

ii. Triggering Events for Leave of Absence Rights

d. Nature of Leave and Restoration Rights

i. Health Benefits

ii. Restoration

iii. Light Duty

e. Medical Inquiries and Records

***Wilson v. Ohio Dep't of Mental Health and Addiction Servs.*, 2024 WL 3814047 (6th Cir. Aug. 14, 2024) Mar.**

Plaintiff Kelli Wilson filed this action against her governmental employer alleging violation of the Rehabilitation Act based on disability. Plaintiff had applied for, and taken, intermittent FMLA leave related to mental health issues beginning in May 2016. Plaintiff's condition led to more frequent absences than she had expected, and by February 2017 she learned that her FMLA allotment was running out. She therefore applied for a separate short-term disability leave, which she continued taking through September 2018. However, unbeknownst to Plaintiff, her short-term disability absences caused her to fall below the 1,250-hour FMLA eligibility threshold. Plaintiff continued taking occasional days off based on whatever additional accumulated leave time she had available. However, plaintiff eventually ran out of leave, and after she took an unexcused absence the department began termination proceedings.

Plaintiff did not file a separate claim for violation of the FMLA, but included the FMLA allegations as part of her Rehabilitation Act claim based on disability. The district court entered summary judgment on statute of limitations grounds as to the federal failure to accommodate

claim, and on the substance of the parallel wrongful termination federal and state law claims. The Sixth Circuit affirmed in a brief unpublished opinion, finding no error in dismissing the failure to accommodate claims as time barred, and that the wrongful termination claim failed because plaintiff did not submit appropriate physician documentation regarding her alleged disability. The remaining state law claims were dismissed without prejudice.

f. Attendance Projects

2. COBRA

3. Fair Labor Standards Act

4. 42 U.S.C. § 1983

5. Title VII of the Civil Rights Act

6. Uniformed Services Employment and Reemployment Rights Act

7. IRS Rules on Cafeteria Plans

8. ERISA

9. Government Contract Prevailing Wage Statutes

10. Railway Labor Act

11. NLRA and LMRA

12. Genetic Information Nondiscrimination Act of 2008

13. Social Security Disability Insurance

C. State Laws

Summarized elsewhere

***Herda v. Centene Corporation*, 2024 WL 68231 (E.D. Mo. Jan. 5, 2024)**

1. State Leave Laws

Summarized elsewhere

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

***Duncan v. Kearfott Corp.*, 2024 WL 244263 (D.N.J. 2024)**

***Tomlinson v. City of Portland*, 2024 UWL 279036 (D. Or. Jan. 25, 2024)**

a. General Principles

Summarized elsewhere

***Owens v. Dufresne Spencer Group LLC*, 2024 WL 3028470 (N.D. Ill. June 17, 2024)**

3. Substitution of Paid Leave

4. Reporting Requirements

***Mays v. Newly Weds Foods, Inc.*, 2024 WL 1181461 (N.D. Miss. Mar. 19, 2024)**

Plaintiff employee brought suit against her employer alleging FMLA retaliation and FMLA interference based on defendant's decision to terminate her. The Mississippi district court denied plaintiff's motion to reconsider the court's prior decision granting summary judgment to defendant on the grounds that plaintiff failed to establish a prima facie case of retaliation or interference. The court's prior decision was based on the facts that plaintiff had not properly notified defendant as per defendant's attendance policy, plaintiff's tardy occurrences were not covered by the FMLA because her medical certification was for full-day absences, and plaintiff had taken no steps to inform defendant that her absences were related to FMLA leave. As to the motion for reconsideration, plaintiff had not presented new facts, but merely added facts that were already known to the parties before summary judgment proceedings. This case is currently on appeal.

5. Fitness-for-Duty Certification

6. Substance Abuse

7. Collecting Employee Share of Group Health Premiums

8. Other Benefits

9. Other Employment During FMLA Leave

10. Restoration to an Equivalent Position for Employees of Schools

IV. Interrelationship with Collective Bargaining Agreements

Summarized elsewhere

***Hamrick v KM Plant Servs, Inc.*, 2023 WL 8790263 (C.D. Ill. Dec. 18, 2023)**

A. General Principles

B. Fitness-for-Duty Certification

CHAPTER 10.

INTERFERENCE, DISCRIMINATION, AND RETALIATION CLAIMS

I. Overview

II. Types of Claims

***Hollis v. Morgan State University*, 2024 WL 211361 (D. Md. May 10, 2024)**

Plaintiff, a Black female professional educator, was employed as a professor by defendant, a historically Black college and university. Plaintiff took FMLA leave to care for her mother. Upon her return to work, she was not assigned to teach classes during the final five weeks of the spring 2018 semester. Although she requested to teach two summer courses that year, she was only assigned to teach one. Plaintiff alleged that defendant interfered with her rights under the FMLA, because the university did not restore her to an "equal position with equal pay," and retaliated against her by: (1) not allowing her to teach during the 2018 spring semester; (2) only assigning her one summer course; and (3) subjecting her to reporting requirements.

The Maryland district court noted that substantive FMLA rights are prescriptive, and a plaintiff seeking redress for employer interference with an entitlement must only show that she qualified for the right that was denied. By contrast, FMLA retaliation claims are proscriptive, so employer intent is relevant. The court determined that the FMLA interference claim failed because plaintiff could not show that the employer failed to restore her to her position or denied her a benefit to which she was entitled as a result of taking FMLA leave. Similarly, the FMLA retaliation claim failed because plaintiff could not show any retaliatory animus or motive by defendant. Consequently, the court granted summary judgment in favor of defendant and dismissed the complaint.

Summarized elsewhere

***Hester v. Osage Landfill, Inc.*, 2024 WL 101854 (N.D. Okla. Jan. 9, 2024)**

***Hughes v. Novo Nordisk, Inc.*, 2024 WL 2131676 (D.N.J. May 13, 2024)**

A. Interference With Exercise of Rights

***Bartol v. City of Chattanooga*, 2024 WL 1740337 (E.D. Tenn. Mar. 18, 2024)**

Plaintiff began working for defendant in 2011. He began as an "Equipment Operator 2" and was promoted to "Crew Supervisor II" in 2012. In August 2019, plaintiff suffered a work injury, and a medical provider determined that the injury prevented plaintiff from completing even light duty work. In March 2020, plaintiff was allowed to return to work, although he was restricted from using a weed eater or push mower. A human resources professional for defendant approved plaintiff's FMLA leave via email to relevant staff on May 29, 2020. Plaintiff returned to work on June 18, 2020, but was given tasks that he had not previously been required to complete as a Crew Supervisor II, including operating a weed eater and a push mower. Plaintiff subsequently requested leave from July 17, 2020, through August 10, 2020. Defendant approved this request via email on July 17, 2020.

On July 22, 2020, plaintiff's supervisor contacted him and said that he would face disciplinary action if he did not come into work that day. Fearing the disciplinary action, plaintiff came into work. On August 5, 2020, plaintiff received two Corrective Actions for falling asleep on the job on April 3, 2020, and for refusing to use the weed eater and falling asleep on the job on

August 4, 2020. On August 25, 2020, defendant held a hearing on these Corrective Actions, which resulted in plaintiff being demoted to Crew Worker I on August 28, 2020.

Plaintiff alleged two FMLA interference claims and one FMLA retaliation claim. The first interference claim was on the ground that when he returned from FMLA leave on June 18, 2020, he was not reassigned to a position that was equivalent to his previous one and had duties that violated his work restrictions. The court denied defendant summary judgment on this claim, finding that defendant did not address it in their motion. The second interference claim was based on defendant requiring plaintiff to return to work from FMLA leave on July 22, 2020 and for not granting plaintiff FMLA leave on August 4, 2020. Defendant argues that plaintiff was not eligible for FMLA leave because he was cleared to work without restrictions. The court rejected defendant's argument, reasoning that they did not provide any admissible evidence supporting their contention. In fact, the only admissible evidence on this issue was the email provided by plaintiff granting his FMLA leave that was sent on July 17, 2020. Since this creates a genuine issue of material fact regarding whether defendant interfered with his FMLA leave, the court rejected defendant's motion for summary judgment on that issue.

Plaintiff also claimed defendant retaliated against him in violation of the FMLA by demoting him from Crew Supervisor II to Crew Work Position I. Defendant argued that plaintiff failed to meet the prima facie case for retaliation for three reasons: (1) he was not medically eligible for FMLA leave; (2) defendant did not know plaintiff was taking FMLA leave because he failed to make a formal request; and (3) plaintiff failed to establish a causal connection between the demotion and taking of FMLA leave. The court rejected the first two arguments because defendant approved plaintiff's FMLA leave via email on July 17, 2020. Regarding the third argument, the court relied on 6th Circuit precedent establishing that "close temporal proximity between the protected activity and the adverse employment action can be sufficient to establish" the causal connection element of a prima facie retaliation case. The court reasoned that the two days between Plaintiff's FMLA leave request and the Corrective Action and the three weeks between the leave request and the demotion were sufficiently close to establish this causal connection. Therefore, the court rejected defendant's argument that plaintiff failed to establish a prima facie FMLA retaliation claim.

Defendant also sought summary judgment on the retaliation claim based on the claim's burden shifting requirements. Defendant argued that the demotion was based on the non-discriminatory reason that plaintiff did not have a work restriction and was not on FMLA leave when he refused to use the weed eater and fell asleep on the job in early August 2020. Therefore, defendant argued plaintiff failed to demonstrate that this non-discriminatory reason was pretextual, which would invalidate the retaliation claim. Plaintiff contended he could provide evidence that this reason had no basis in fact based on the myriad communications showing that his FMLA leave was approved and fully supported by medical professionals. The court found this evidence sufficient to show that defendant's non-discriminatory reason for demoting plaintiff was pretextual. Thus, the court rejected defendant's motion for summary judgment on this issue.

Finally, the court rejected defendant's argument that since this was previously heard by an administrative law judge, the doctrine of res judicata should be used to dismiss plaintiff's retaliation claim. The court concluded that defendant failed to show how the previous hearing satisfied the requirements to apply res judicata.

***Cowell v. Illinois Dep't of Hum. Servs.*, 2024 WL 551891 (S.D. Ill. Feb. 12, 2024)**

Plaintiff, an admissions discharge coordinator for defendant's mental health facility, filed a lawsuit against defendant and three individual supervisors for FMLA interference. Plaintiff alleges that defendants interfered with her FMLA leave by forcing her to use her limited FMLA time instead of allowing her to modify her schedule. Defendants contend that they never denied plaintiff's request to use FMLA leave, nor did they dissuade her from taking FMLA leave or consider her FMLA leave as a negative factor in employment actions. On the contrary, they encouraged plaintiff to use FMLA leave rather than opting for a different accommodation. Plaintiff does not argue that defendants denied or restrained her FMLA leave, only that defendants interfered with her leave by pushing her to use her limited FMLA leave instead of offering a more flexible accommodation.

Defendants moved for summary judgment and the district court agreed with defendants and held that under the FMLA, an employer has no obligation to assist an employee in avoiding the use of limited FMLA leave. Additionally, the district court noted that plaintiff had also failed to point to any evidence showing that she had provided sufficient notice of her intent to take FMLA leave, the denial of her requests, or any discouragement from taking the FMLA leave that she was entitled to. Because plaintiff failed to meet these requirements, the court granted defendant's motion for summary judgment.

***Crispell v. FCA US LLC*, 2024 WL 3045224 (6th Cir. June 18, 2024)**

Plaintiff, a floater filling in for multiple positions at defendant's truck assembly plant, sued defendant for FMLA interference, among other things, following her termination for repeated tardiness. Although Plaintiff had been granted intermittent FMLA leave for an ongoing medical condition, defendant did not permit her to use FMLA leave to excuse her failure to follow the company's policies requiring a call-in 30 minutes prior to her shift start time. The district court for the Eastern District of Michigan granted summary judgment to defendant, finding not only that plaintiff had not raised an interference claim in her complaint, but also that when plaintiff's allegations were analyzed under a retaliation framework, she had failed to demonstrate pretext for unlawful retaliation. The Court of Appeals reversed.

First, the appellate court held that a plaintiff need only put a defendant on fair notice of the claims presented and the grounds upon which they rest. As such, plaintiff had not waived her claim based on an interference theory where the allegations in the complaint could apply to both interference and retaliation claims. All plaintiff needed to allege is that she failed to receive all the FMLA leave to which she was entitled. Because plaintiff had alleged that she had been suspended for calling in late even though she provided defendant with a statement that her late call in had been due to the physical conditions documented in her medical provider's statement, her claims should have been considered by the district court under an interference theory.

On the merits, the court held that because the leave was unforeseeable the governing standard only requires that an employee comply with the employer's usual procedures for requesting leave absent unusual circumstances. Here, the court held that plaintiff had raised evidence that could lead a jury to find that an "unusual circumstance" existed. Specifically, after each instance of tardiness, plaintiff submitted letters to defendant citing her "covered illness" or

"the nature of her covered illness" as the reasons she should not be penalized. In addition, at defendant's suggestion. plaintiff submitted a letter from her doctor explaining her symptoms and explaining why she had been unable to call in on time. Finally, defendant had dealt with plaintiff on this issue previously and knew the details of her medical condition. From this, the jury could have concluded that her medical condition qualified as an "unusual circumstance" for purpose of establishing her prima facie case.

***Crowelle v. Cumberland-Dauphin-Harrisburg Transit Auth.*, 2024 WL 4468492 (M.D. Pa. Oct. 10, 2024)**

Plaintiff brought suit under the FMLA for interference and retaliation. Defendants brought a motion for summary judgment. Plaintiff worked as a bus driver for Defendant and suffered from chronic insomnia, but was able to work with occasional time off. Pursuant to the FMLA, plaintiff's doctor certified her condition, and defendant approved plaintiff's request for intermittent leave. However, the staff in the human resources department changed after plaintiff had been recertified for intermittent leave. Plaintiff was previously told she was recertified and approved for intermittent FMLA leave, but the new human resources department staff did not have proper documentation reflecting the approval. Due to the internal conflicting documentation in the human resources department, plaintiff was given notice of her pre-termination hearing to address her attendance. Plaintiff's employment was terminated for violating the company's attendance policy.

The court denied defendant's motion for summary judgment on the interference claim, holding there were genuine issues of material fact, conflicting accounts, and credibility issues to be resolved by a jury.

Regarding plaintiff's retaliation claim, defendant argued plaintiff had not established that her termination was causally related to her exercise of FMLA rights. The court held that plaintiff pointed to evidence that defendant did not apply its written attendance policies in plaintiff's case and that its internal human resources e-mails showed defendant formulated a plan to make issues out of plaintiff's FMLA paperwork, mark her absent when she tried to use FMLA leave, and terminate her employment unless she recertified for her chronic insomnia. The court held a reasonable, rational jury could look at all the evidence and conclude that defendant fired plaintiff because she sought to use intermittent FMLA leave, and not because she violated defendant's attendance policies. Accordingly, the court denied defendant's motion for summary judgment as to plaintiff's FMLA retaliation claim.

***Curtis v. City of Newark*, 2024 WL 3594329 (D.N.J. July 31, 2024)**

Plaintiff brought suit under the FMLA for wrongful denial of leave to care for his sick father. Defendant brought a motion for summary judgment. Plaintiff alleged he made requests FMLA leave to care for his father who was suffering from lung cancer, but his requests were denied without explanation. Plaintiff's FMLA cause of action was understood by the court to be asserting both a claim for interference and retaliation.

Regarding plaintiff's interference claim, defendant argued plaintiff failed to produce any correspondence showing that medical documentation was sent to and received by defendant. In

response, plaintiff pointed to two letters he sent indicating his father had lung cancer and advising defendant that his absence from work was required to assist his aging parents in this time of crisis. Plaintiff also referenced notes from two medical providers indicating his father has recently been diagnosed with cancer and would benefit from family members being able to visit him and support him. The court held there were genuine issues of material fact as to whether plaintiff sent, and defendant received, plaintiff's requests for leave and supporting medical records; thus, it denied summary judgment with respect to plaintiff's interference claim.

Regarding the retaliation claim, the adverse employment actions alleged by plaintiff were that he was denied the appropriate pay as acting supervisor and was denied a promotion to permanent supervisor. However, during his deposition, plaintiff admitted that the denial of his promotion had nothing to do with his family leave, and he failed to defend his FMLA retaliation claim in his opposition briefing. The court held there was no genuine issues of material fact as to whether any adverse employment decision was causally connected to plaintiff's FMLA leave request, and summary judgment was granted for defendant with respect to the FMLA retaliation claim.

***Desiderio v. Hudson Techs, Inc.*, 2024 WL 4026260 (S.D.N.Y. Sept. 3, 2024)**

Plaintiff brought suit under the FMLA for FMLA interference. Defendant brought a motion for summary judgment. Defendant contended that there were no disputed material facts sufficient to support that plaintiff was denied benefits to which she was entitled under the FMLA.

Plaintiff argued that Defendant interfered with her FMLA benefits by (1) withholding approval of her FMLA leave, (2) discouraging her from returning to work, (3) not offering reinstatement of her employment after completing her FMLA leave, and (4) terminating her employment without giving the required notice that she had been formally approved for FMLA leave. The court held no reasonable jury could conclude that Defendant interfered with Plaintiff's FMLA benefits by withholding approval of her leave or failing to notify her that her leave had been approved, that Defendant interfered with Plaintiff's FMLA benefits by discouraging her from returning to work, or that Defendant interfered with Plaintiff's FMLA benefits by not offering to reinstate her position after her FMLA leave was completed. Therefore, the court granted summary judgment to defendant on Plaintiff's FMLA interference claim.

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

Plaintiff was hired by defendant wine distributor as a wine purchasing manager until her title was changed to wine purchasing agent. After plaintiff's two attempted suicides, she took a leave of absence from defendant pursuant to the FMLA and short-term disability. Approximately two years later, Plaintiff told defendant that she needed intermittent FMLA leave so she could add an extra therapy session each week. Defendant responded by telling her to just take the time she needed and let her boss know, and did not give her any FMLA paperwork. Plaintiff ultimately resigned her employment. Plaintiff brought suit under the FMLA, alleging that defendant violated the FMLA and the Maine Family Medical Leave Requirements by interfering with plaintiff's right to obtain medical leave. Defendant moved for summary judgment.

The district court in Maine denied defendant's motion, concluding that plaintiff plausibly alleged claims for FMLA interference in violation of the FMLA and MFMLR. Defendant argued

that plaid could not establish a prima facie case of retaliation because she could not show that she was entitled to leave under the FMLA, she did not give defendant notice of her intention to take leave, and defendant never denied her FMLA benefits to which she was entitled.

The court rejected defendant's argument and found that given that plaintiff was treated for and provided medication for her diagnoses of anxiety, panic disorder, PTSD, and major depressive disorder recurrent, those facts and drawing all reasonable inferences in favor of plaintiff, a reasonable factfinder could find those conditions meet the "serious health condition" standard. The court further held that plaintiff's doctor's testimony that had she presented him with FMLA paperwork, he would have agreed that she needed leave and that was sufficient evidence that a medical provider believed plaintiff could not perform the essential functions of her position and her leave was "medically necessary." The court also found that plaintiff's conversation with defendant requesting FMLA leave to attend additional therapy sessions because of her depression was sufficient for a reasonable factfinder to find that plaintiff gave defendant notice of her intent to take leave. Finally, the court found that because defendant did not give plaintiff the requested FMLA paperwork, encouraged her to talk to her supervisor and not an HR employee about needing time off for counseling appointments, and told her that because she was salaried, there was no reason she couldn't flex her schedule and she therefore did not need to take FMLA leave, those facts at the very least create a question of material fact whether defendant's actions unlawfully discouraged plaintiff to not take FMLA/MFLMLR leave.

***Hamrick v KM Plant Servs, Inc.*, 2023 WL 8790263 (C.D. Ill. Dec. 18, 2023)**

Plaintiff, a journeyman industrial cleaning field technician, for defendant employer, requested and was approved for 12 weeks of FMLA leave. After the leave began, defendant's HR Director placed two completed forms in plaintiff's personnel file; a "Separation Record" and an "End of Employment Form." Both documents recorded the day of separation as the day before Plaintiff's approved FMLA leave began. Plaintiff required and was approved for additional time. He returned to work in August 2019 as a "probationary employee," a designation that indicated he had left his employment and thereby forfeited his seniority rights. That November, he lost his job entirely due to seniority. Plaintiff later brought this action under the FMLA, alleging that defendant's handling of his medical leave and his eventual termination constituted unlawful interference.

Defendant moved for summary judgment, which the district court in the Central District of Illinois denied. First, the court found that although the record contained two competing sets of facts, a jury could ultimately find that defendant violated the FMLA by misclassifying or firing plaintiff effective with the start date of his medical leave.

Second, the court pointed out the apparent illusory nature of an approved medical leave with job protection and two internal company documents stating plaintiff was terminated when the leave began. The court further stated that defendant's arguments contradicted the internal documents. Nonetheless, defendant persisted with its claim that the "Separation Record" and "End of Employment Document" were merely "another internal record of Plaintiff's status as an employee on leave." The court rejected that argument as the court would be required to construe the documents contrary to the plain meaning of the document titles.

Finally, the court compared the "Return to Work Probation Agreement" with the union contract language, finding a mismatch between the union agreement's definition of probationary employee and the nature of plaintiff's absence from work while under FMLA protection. Ultimately though, the court reiterated that a collective bargaining agreement clause providing less protection than the FMLA is "superseded by the FMLA."

***Herda v. Centene Corporation*, 2024 WL 68231 (E.D. Mo. Jan. 5, 2024)**

Plaintiff, a former employee of Centene Corporation, brought suit against her employer alleging FMLA interference. Defendant moved to dismiss for failure to state a claim, arguing that plaintiff did not allege any facts showing the employer denied or exhibited discriminatory animus toward her use of FMLA leave. A district court in Missouri granted the motion in part and denied it in part.

The court first identified the elements for a claim of interference under the FMLA. A plaintiff must show that (1) she was eligible for FMLA leave; (2) defendant was on notice of plaintiff's need for FMLA leave; and (3) defendant denied plaintiff benefits to which she was entitled under the FMLA.

Plaintiff did not assert she was denied FMLA leave, but rather that she was placed on a PIP in retaliation for using FMLA leave and in an effort to discourage her further use of such leave. Plaintiff took FMLA leave in June 2020 to seek treatment for her lung cancer. She returned from leave around August 31, 2020, without restrictions, and there was nothing in the complaint to suggest she sought FMLA leave any time thereafter. Plaintiff received positive performance evaluations in 2020 and 2021. In December 2021, defendant placed plaintiff on a PIP. The court found insufficient facts to support an inference of causation between Plaintiff's FMLA leave in June-August 2020 and her placement on a PIP in December 2021, given the significant time gap. The court dismissed the FMLA interference claim without prejudice.

***Hess v. Township of Saint Thomas*, 2024 WL 1333371 (M.D. Pa. Mar. 28, 2024)**

Plaintiff, a plant operator/supervisor, filed an FMLA interference claim against his employer. Plaintiff alleged that he was approved for intermittent FMLA leave between November 2019 and November 2020. After that period, reapplied for FMLA leave and claimed the employer delayed formal approval of his reapplication "for well over a month," by misplacing the signature page on the application form and by requiring a doctor's signature. The employer moved to dismiss the claim, arguing that plaintiff's FMLA requests were granted on two occasions. The Pennsylvania district court granted the motion to dismiss the FMLA interference claim.

The court found that plaintiff's complaint did not allege sufficient facts to support the claim of FMLA interference. Specifically, plaintiff did not allege that during the delayed approval, he gave notice to the employer of needing leave, or that defendant denied him FMLA benefits.

The court permitted plaintiff to file a second amended complaint to the extent he possessed additional facts to cure the defect in his complaint, but if plaintiff failed to amend, then the dismissal would convert into a dismissal with prejudice.

***Holly v. BBS/Mendoza, LLC*, 2024 WL 2273761 (S.D. Ohio May 20, 2024)**

Plaintiff worked in the kitchen of a McDonald's franchisee for nearly three years without receiving any written discipline. Plaintiff was fired for allegedly harassing a customer after her supervisor directed her to clock out. Plaintiff sued for, among other claims, FMLA interference. The employer moved for summary judgment, and the Ohio district court denied the motion.

Because defendant's motion for summary judgment contained no citations to record evidence or authority, the court determined defendant had not proved entitlement to judgment as a matter of law.

***Irvin v. Versatrim, LLC*, 737 F.Supp.3d 297 (E.D.N.C. 2024)**

Plaintiff employee filed a complaint against defendant employer, alleging interference and retaliation in violation of the FMLA, as well as violations of the ADA. Plaintiff oversaw defendant's production of trim and molding and was responsible for stopping production if quality issues arose. Prior to working for defendant, plaintiff suffered a back injury while serving in the military. Plaintiff aggravated that injury at work. Plaintiff notified defendant of the injury and submitted a medical note providing certain work restrictions. On April 12, 2023, plaintiff informed defendant he was scheduled for back surgery on May 19, 2023, and requested FMLA paperwork. On April 13, 2023, plaintiff worked overtime to finish a production line and marked all material from that production run as viable, usable material. The next day, defendant discovered most of the material was actually scrap and not usable. Plaintiff was terminated that same day. Prior to plaintiff's firing, he had received numerous disciplinary actions for various infractions, including warnings about punctuality and counseling on quality control issues.

Plaintiff claimed defendant violated the FMLA by terminating his employment before he could take FMLA leave. Defendant moved for summary judgment. Though the North Carolina district court found the proximity of the firing to the request for leave constituted a prima facie case of FMLA interference, defendant's evidence that it had a legitimate reason to terminate plaintiff and would have terminated him regardless of his request for FMLA leave, was enough to overcome the assumption and the court granted defendant's motion for summary judgment on the interference claim. Defendant's motion for summary judgment was also granted on the retaliation claim with the court applying the *McDonnell Douglas* framework, again citing evidence defendant had a legitimate reason to fire plaintiff and stating plaintiff had failed to create a genuine issue of material fact concerning pretext.

***Johnson v. DeJoy*, 2024 WL 4215557 (D.D.C. Sept. 17, 2024)**

Plaintiff employee brought several claims against her employer including violations of the FMLA by interfering with her ability to take leave and retaliating against her. Defendant employer moved to dismiss, or in the alternative, for summary judgment. The D.C. court granted defendant's motion to dismiss.

Plaintiff, a full-time mail carrier, suffered several on-the-job injuries throughout her tenure including in November 2006, December 2007, March 2019, and June 2020. Following the March 2019 injury, plaintiff took leave approved by the Office of Workers' Compensation Programs (OWCP) and returned to work in January 2020. Upon her return to work, plaintiff allegedly

notified supervisors of her disabilities and requested reasonable accommodations which plaintiff alleges were denied and rather she was met with hostility including in the form of her supervisor improperly coding her approved leave, resulting in loss of pay and benefits. In April 2020, plaintiff's doctor advised her to take a leave of absence and plaintiff alleges defendant failed to advise her of her rights under the FMLA and so she was forced to take personal leave. Plaintiff filed this suit in August 2023.

Defendant argued plaintiff's claims failed because (1) some are time-barred, (2) plaintiff did not sufficiently allege she was eligible for benefits or that she was prejudiced by defendant's actions, and (3) she failed to plausibly allege the elements of interference and retaliation. The court agreed certain claims were barred by the FMLA's three-year statute of limitations for willful violations, and that plaintiff failed to state plausible interference and retaliation claims because at no time did she allege she was absent from work because she was taking FMLA leave. Further, plaintiff's causation argument that the miscoding of her absences was retaliation for her request for leave in April 2020 was entirely based on proximity, yet plaintiff could not plead specific dates of the adverse action. Only two of plaintiff's allegations of time miscoding specified dates, both of which fell outside the three-year statute of limitations. Further, the court stated miscoding non-FMLA leave, without more, does not violate the FMLA.

Kolbe v. NSR Marts, Inc., 2024 WL 474824 (D. Md. Feb. 7, 2024)

Plaintiff, an assistant manager at defendant's markets, sought and received FMLA leave following an automobile accident. After one month of leave, plaintiff was released to return to work by her healthcare provider with light duty restrictions, which defendant refused. Plaintiff did not return to work and received no pay. More than ten months later, defendant formally notified plaintiff that she was terminated. Plaintiff alleged that the employer misrepresented her FMLA rights by promising her a position at a different work location, failing to send her a termination notice promptly at the close of her twelve weeks of FMLA leave, and continuing to communicate with her, including by accepting her recovery updates and sending her letters about NSR's retirement plan.

The Maryland district court dismissed Plaintiffs' interference claim, which plaintiff based on the theory that the employer misrepresented her FMLA rights. The court noted that to constitute misrepresentation sufficient to demonstrate FMLA interference, an employer must affirmatively tell an employee that they could return to work after the expiration of the employees' FMLA leave, and then improperly terminate that employee after they do as instructed. The court held that accepting medical certification information past the twelve-week statutory limit under the FMLA, providing vague assurances as to employment status, and failing to provide notice of separation for ten months after the conclusion of its obligations under the FMLA did not amount to misrepresentation sufficient to constitute FMLA interference.

***Landolfi v. Town of North Haven*, 2024 WL 3925332 (D. Conn. Aug. 23, 2024)**

Plaintiff was a Human Resources Administrator for the Town of North Haven. Plaintiff used FMLA leave twice, in 2018 and in 2019, and both times, continued to complete various work tasks while on leave. In June of 2020, plaintiff's position was eliminated. Plaintiff brought claims of FMLA interference and retaliation. In ruling on summary judgment, the court ruled that any

claims stemming from plaintiff's 2018 FMLA leave were untimely, because they occurred more than three years before she filed her complaint, and the continuing violation doctrine does not apply in FMLA cases. However, claims stemming from her 2019 FMLA leave were timely, because they occurred within three years, and there was sufficient evidence for a reasonable factfinder to find willfulness, allowing for the third year.

On the interference claim, plaintiff argued that her rights were interfered with because she was required to perform work at home while on FMLA leave. The court agreed that this interfered with her FMLA leave, and denied summary judgment. The court then found that plaintiff established a *prima facie* case of FMLA retaliation, because even though there was a long gap between her 2019 FMLA leave and her termination, there was other evidence that defendant's proffered reasons were pretextual, as plaintiff argued that she was the only employee who had her position eliminated, and there were incriminating comments from supervisors and other employees. Therefore, the court also denied summary judgment on the FMLA retaliation claim.

***Lohmeier v. Gottlieb Mem'l Hosp.*, 2024 WL 942425 (N.D. Ill. Mar. 5, 2024)**

Plaintiff brought multiple claims against her employer after it terminated her employment for being suspected of stealing narcotics from the hospital. She requested FMLA leave as she was being terminated, but the district court found this was neither interference with FMLA rights nor retaliation for requesting FMLA leave, as the undisputed evidence demonstrated she was terminated because of the narcotics issue.

***Phillips v. Jackson Public School Dist.*, 2023 WL 7414484 (S.D. Miss. Nov. 9, 2023)**

Plaintiff, a fifth-grade teacher, asserted claims of FMLA interference and retaliation, among others, against her former employer.

While performing her full-time teaching job, plaintiff was struck in the back of the head by a student, and plaintiff reacted by pushing the student. Within two school days, the employer and plaintiff met to debrief on the incident, and she was suspended for five days for violating the employer's ethics policy. During this time off, plaintiff suffered dizzy spells and sought medical care. On her expected return to work date, plaintiff emailed the employer indicating she was unwell and would not be at work; plaintiff provided a nurse practitioner's medical note restricting her to light duty and no driving. After additional days of emailing in sick, the employer's principal contacted plaintiff informing her of the employer's unexcused absence policy and insufficiency of the medical note for certain previously unexcused absent days, and directing plaintiff to the employer's FMLA manager. Plaintiff replied that unless the employer provided an accommodation, plaintiff could not return to work due to the dizziness. The employer's principal gave plaintiff a deadline to provide a medical note addressing the unexcused absences. Additionally, plaintiff contacted – as instructed by the employer - the FMLA manager and was provided FMLA paperwork with another deadline. The FMLA paperwork deadline was later than the one for unexcused absences. Some days later, the employer contacted plaintiff notifying plaintiff of the looming deadline and potential grounds for termination – abandonment of job and duties. Plaintiff reminded the employer of the FMLA paperwork deadline and advised the medical provider would have the paperwork completed as soon as possible. Plaintiff continued to inquire about the employer's available accommodations concerning elements of her job. One

day after the unexcused absences deadline – before 8 a.m. in the morning via email - plaintiff requested an extension of time to submit documentation for the unexecuted absences. Later that same day, plaintiff submitted completed FMLA paperwork. The next day, the employer's FMLA manager approved a twelve-week period. Three days after that approval, the employer notified plaintiff her FMLA leave was denied. The employer's termination appeal process was triggered at plaintiff's request. Plaintiff was not reinstated.

The court denied the employer's motion for summary judgment, finding the employer had not established that the FMLA did not apply to plaintiff. With respect to the interference and retaliation claim, the court found that the employer was well aware ahead of the termination deadline that plaintiff was completing the FMLA leave forms and did not have a return-to-work date to provide. The court reasoned that considering the totality of circumstances, a jury could reasonably find – despite any of plaintiff's admissions concerning the termination deadline – that the employer terminated plaintiff to prevent her from taking FMLA leave and/or because she was seeking FMLA leave.

***Quintana v. Clark County School District*, 2024 WL 709542 (D. Nev. Feb. 21, 2024)**

Plaintiff brings this action claiming FMLA interference, among other claims. The court granted in part and denied in part defendant's motion for summary judgment. Plaintiff was a female high school engineering and robotics teacher who experienced difficulty with male colleagues, resulting in plaintiff requesting and obtaining FMLA leave for significant distress. While on FMLA leave, plaintiff was reassigned (demoted) to other classes where her absence would be less of an impact (e.g., more long-term substitute teachers available), saw an increase in her teaching load, and became ineligible for certain pay incentives. During plaintiff's FMLA leave, defendant contacted plaintiff to inquire about plaintiff's intent to return to work and requested a reply by a certain date. Plaintiff did not provide defendant with a reply before the deadline; thus, her employment was administratively terminated.

The court evaluated plaintiff's FMLA claim within an interference framework. In doing so, the court found defendant's concession on record that plaintiff's reassignment was "a product of her FMLA leave" was sufficient to survive summary judgment as it presented a genuine issue of material fact as to a prima facie denial of plaintiff's FMLA rights. However, with respect to plaintiff's termination claim, the court found it fatal that plaintiff did not reply by the objective deadline, which the record testimony indicated had nothing to do with plaintiff's FMLA use.

***Royston v. City of Scottsdale*, 2024 WL 4277871 (D. Ariz. Sept. 24, 2024)**

Plaintiff was a police aid who worked at defendant city's police department. Following a series of medical issues over multiple years during which plaintiff took FMLA leave on two occasions, plaintiff brought suit against defendant alleging a variety of claims, including FMLA interference and FMLA retaliation. Plaintiff alleges that she was denied a transfer to a different role due to her first FMLA leave and that she was subject to increased scrutiny after she

complained about defendant interfering with her rights under the FMLA. Defendant moved for summary judgment, and the court granted defendant's motion on all claims.

With respect to the FMLA interference claim, the court found that plaintiff did not establish evidence of an adverse employment decision resulting from her use of leave. Plaintiff failed to make any connection between her FMLA leave in early to mid-2020 to defendant's decision not to permit her to transfer to a different role in April 2021. The court further found that plaintiff's argument that she was subject to increased scrutiny following her complaint about FMLA interference was unsupported. Plaintiff failed to specify what she considered was increased scrutiny and admitted that the only basis for her increased scrutiny theory was that the interactive process, which was initiated to evaluate her accommodation needs, "stressed her out." The court found that plaintiff's own feelings were not a basis to impute a retaliatory motive on defendant.

***Shipton v. Baltimore Gas & Elec. Co.*, 109 F.4th 701 (4th Cir. 2024), cert. denied, 2024 WL 5011737 (U.S. Dec. 9, 2024)**

Plaintiff brought claims of FMLA interference and retaliation against three corporate defendants and four individuals. The district court granted defendants' motion for summary judgment on the FMLA interference and retaliation claims and also dismissed all defendants other than Baltimore Gas and Electric Company. The Court of Appeals affirmed. Plaintiff had been certified to take intermittent FMLA leave for hypoglycemia due to diabetes. When attempting to take further FMLA leave for neuropathy due to diabetes, plaintiff submitted contradictory FMLA paperwork. Defendants investigated and terminated plaintiff's employment due to conflicting medical documentation.

Plaintiff asked the Court of Appeals to reverse summary judgment on the FMLA interference claim because the District Court improperly applied the "honest belief" doctrine as to the reason for termination. The Court of Appeals again declined to address the application of the doctrine and instead found plaintiff had not properly preserved the application of the doctrine for appeal, but rather argued the evidence did not support defendant's honest belief. The Court of Appeals found there were no exceptional circumstances in this case that warranted considering the issue on appeal. The Court of Appeals affirmed summary judgment on the FMLA retaliation claim because the record demonstrated conflicting medical documentation, and the FMLA allows for an employee to be terminated for misconduct in the leave process, even if the conflict regarding the paperwork was later resolved. The Court of Appeals concluded that because defendant's termination reason was related to the FMLA leave did not render it direct evidence of discriminatory intent. In addition, plaintiff could not establish that defendant's legitimate, nondiscriminatory reason was pretextual, finding that while plaintiff may not have been actually misusing FMLA leave, the inquiry is only whether the employer's reason was legitimate and nondiscriminatory at the time and not whether the reason was correct.

The Court of Appeals also declined to extend the default statute of limitation under the FMLA for a willful violation, finding defendant's reason for termination related to his use of FMLA does not make it a violation at all, let alone a willful violation. Finally, the Court of Appeals affirmed the dismissal of the corporate and individual defendants because they were not his "employer" under the statute.

***Stratton v. Bentley Univ.*, 113 F.4th 25 (1st Cir. 2024)**

Plaintiff, an employee, had performance difficulties at work. She later requested FMLA leave in order to attend physical therapy appointments twice per week. The doctor's note indicated she also needed to work from home on those two days. Her request to work from home was denied because her employer would suffer an undue hardship. Her request for leave to attend medical appointments was granted. Plaintiff filed suit alleging, inter alia, FMLA interference and retaliation. The First Circuit affirmed the grant of summary judgment to the employer/university on all claims.

The court determined there was no interference with FMLA leave because plaintiff's FMLA request was approved within days of providing required documentation. The court also rejected plaintiff's claim that the university's request for additional information to clarify the length of leave was not so discouraging as to interfere with the employee's right to leave. Finally, the court rejected plaintiff's claim of interference because her FMLA leave was denied to work from home because there was nothing in the statute to suggest work from home requests are protected pursuant to the FMLA.

The First Circuit also rejected the employee's FMLA retaliation claim after applying the burden shifting framework because there was no direct evidence of retaliation. The court assumed without deciding that the employee established a prima facie case and determined the employer met its burden of providing a nondiscriminatory justification based on performance concerns and poor job performance. The employee was unable to overcome this by showing pretext. The court noted that university supervisors had raised concerns about performance before the request for FMLA leave and there were no negative comments or reluctance regarding the FMLA leave. Therefore, no jury could find that the justification for the performance improvement plan was pretext to retaliate against the employee.

***Tornabene v. City of Blackfoot*, 2024 WL 4145753 (D. Idaho Sept. 11, 2024)**

Plaintiff, a human resources director, sued defendants, the city and plaintiff's supervisors, for FMLA interference and retaliation and other claims. The district court granted summary judgment for defendants on the FMLA claims. Plaintiff's interference claim failed because she was not denied FMLA leave, and plaintiff had not claimed to have a serious health condition. Further, plaintiff's retaliation claim failed on summary judgment because the FMLA leave was taken a year before her termination and there was no causal link to her termination.

Summarized elsewhere

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

***Farmer v. FilmTec Corp.*, 2024 WL 4239552 (D. Minn. Sept. 19, 2024)**

***Foster v. Credit One Bank, N.A.*, 2024 WL 4625291 (9th Cir. Oct. 30, 2024)**

***James v. FedEx Freight, Inc.*, 2024 WL 3569984 (N.D. Ala. July 29, 2024)**

***Kelly v. Kinder Morgan, Inc.*, 2024 WL 3969683 (E.D. Pa. Aug. 28, 2024)**

***Kirkendall v. Boone Cnty. Bd. of Educ.*, 2024 WL 966239 (E.D. Ky. Mar. 6, 2024)**

***Owens v. Dufresne Spencer Group LLC*, 2024 WL 3028470 (N.D. Ill. June 17, 2024)**

***Tanner v. Stryker Corp. of Michigan*, 104 F.4th 1278 (11th Cir. 2024)**

1. Prima Facie Case

***Ayars v. AutoZoners, LLC.*, 2024 WL 167172 (D. Or. Jan. 5, 2024)**

Plaintiff was a manager at one of defendant's locations until her employment was terminated in 2020. Plaintiff claimed defendant interfered with the exercise of her rights under the FMLA by terminating her employment two days after she requested FMLA leave due to a heart condition.. Defendant argued that she was terminated after two separate investigations into violations of defendant's policies. Plaintiff claimed these investigations were retaliations against her requests to help run the store.

The court granted defendant's motion for summary judgment on the FMLA claim. First, the court reasoned that this type of FMLA claim was an interference claim since it centered on the employer allegedly interfering with an employee exercising their rights under the FMLA. This is distinct from discrimination or retaliation claims recognized by the 9th Circuit, which require plaintiff to assert that they "opposed a practice prohibited by the statute or participated in proceedings under the statute."

The court then articulated a prima facie FMLA interference claim, stating in part that plaintiff must show that "the taking of or requesting protected leave was a 'negative factor' in the adverse employment decision." The court concluded that plaintiff's suit failed to establish this component. First, the court notes plaintiff requested FMLA leave on October 7th, 2020, but the termination decision was made on September 28th, 2020. While defendant made the decision not to communicate this to plaintiff until they could meet in person, the court concluded that these circumstances meant that plaintiff failed to prove her request for FMLA was a negative factor in defendant's decision to fire her. Plaintiff claimed that defendant knew about her intention to make an FMLA claim before September 28th, 2020, making it possible for the termination to be considered a 'negative factor'. However, the court determined that previous instances of plaintiff requesting medical leave were not "unconditional requests" for time off, and were therefore insufficient to form the basis of an FMLA interference claim.

Chavous v. City of Saint Petersburg, 2024 WL 366243 (11th Cir. Jan. 31, 2024)

Plaintiff claimed defendant interfered with his FMLA leave and retaliated against him for taking leave. The district court for the Middle District of Florida granted summary judgment to defendant and plaintiff appealed.

First, plaintiff argued the district court erred in concluding that he had failed to state a *prima facie* case of FMLA interference, but the appellate court affirmed the district court's decision, holding that he had not been denied a benefit to which he was entitled under the FMLA. Plaintiff was initially terminated for unexcused absences, but that termination was rescinded once plaintiff's doctor submitted the necessary certification for his FMLA leave, and plaintiff was given

back pay. Because plaintiff's termination was rescinded and he was made whole, the appellate court held that plaintiff was not denied a benefit under the FMLA. Plaintiff argues that, as to his second termination, his doctor told him recovery could take longer than the day he was told to return to work. However, the record showed that his doctor had in fact said he could return to work sooner. Furthermore, he did not request additional FMLA leave after being told to return to work. The appellate court concluded again that he had not been denied a benefit to which he was entitled under the FMLA.

Second, plaintiff argued the district court erred in concluding that he failed to state a *prima facie* case of FMLA retaliation, but the appellate court again affirmed the district court's decision. The appellate court concluded that plaintiff had not established a *prima facie* case of FMLA retaliation because plaintiff failed to show a sufficient causal link between the protected conduct of requesting FMLA leave and the adverse employment action of being terminated. Although the court noted that usually a period of one month from the end of the protected activity and the adverse employment action is not "too protracted" to establish a causal connection, more was needed in this situation where an employer had contemplated an adverse employment action before an employee engaged in the protected activity. Because plaintiff had a documented history of absenteeism and had previously taken unscheduled leave, which was not connected to his accident, the appellate court concluded that the close temporal proximity alone had not established the necessary causal connection.

***Frank v. Krapf Group, Inc.*, 2024 WL 919836 (E.D. Pa. Mar. 4, 2024)**

Plaintiff brought an action against her employer, Krapf Group Inc., for, among other claims, defendant's alleged interference with her ability to take leave under the FMLA and alleged retaliation against her for taking such leave.

Plaintiff informed defendant that she needed to take FMLA leave, although she didn't identify a date such leave would begin. On the call, she was offered a severance package in lieu of FMLA leave. Plaintiff declined the offer and requested the paperwork necessary to start her FMLA leave. Defendant conducted an audit which revealed that Plaintiff had accessed confidential bonus information. Her employment was subsequently terminated.

Summary judgment was granted to defendant. On her FMLA interference and retaliation claims, Defendant prevailed because plaintiff was not denied FMLA benefits, so her claim failed as a matter of law.

***Fritz v. Allied Services Foundation*, 2024 WL 843918 (M.D. Pa. Feb. 28, 2024)**

Plaintiff was a personal care attendant at an assisted living facility. She claimed defendant harassed and discriminated against her because of her son, an individual with disabilities. She asserted claims under the ADA and the FMLA. On the FMLA claim she argued that defendant kept her from using approved FMLA leave and retaliated against her for using that leave.

Defendant filed a motion to dismiss under F.R.C.P. 12(b)(6). The court held that defendant's motion fell short on the interference claim and held that plaintiff's averments in the complaint that her employer advised her she needed to make up time for using FMLA leave were sufficient to state a claim for FMLA interference. The court further held that her amended

complaint plausibly set forth constructive discharge as an adverse employment action, denying defendant's motion to dismiss on that ground.

***Gaston v. Henry Ford Health*, 2023 WL 8788946 (E.D. Mich. Dec. 19, 2023)**

Plaintiff filed a complaint pro se alleging that the Hospital interfered with and retaliated against him for exercising his rights under the FMLA.

The court found a sufficient basis for processing the complaint which alleged plaintiff's foot injury was a serious condition entitling him to FMLA leave. The complaint further alleged his supervisor interfered with his request for FMLA leave by failing to explain his rights under the FMLA and ultimately terminating him based on unapproved absences despite knowing of his foot injury.

The court further held that the complaint's allegations that plaintiff engaged in a protected activity by requesting leave for his foot injury were adequate based on the temporal proximity between his FMLA request and his termination were sufficient to support an inference of causation.

***Glover v. Hudson Mem. Nursing Home*, 2024 WL 759299 (W.D. Ark. Feb. 23, 2024)**

Plaintiff claimed that defendant, a short-term rehabilitation and long-term care facility, violated the FMLA when it decided to remove her from the Director of Nursing position. Defendant moved for summary judgment.

Plaintiff notified Defendant of a scheduled knee surgery but did not turn in her FMLA paperwork until after her surgery. FMLA leave was granted; however, her supervisor texted her while on leave about questions at work. Defendant's bookkeeper discovered that plaintiff failed to properly submitted or complete Medicaid paperwork for some of the residents. The bookkeeper also found plaintiff's office in disarray. Plaintiff returned to work and received a negative performance evaluation. Her supervisor offered her a different position in lieu of termination which plaintiff declined because of lower pay.

Although she was granted FMLA leave for her knee surgery, plaintiff alleged defendant interfered with her leave by asking her to complete work-related tasks while on leave. Apart from answering texts, there was no evidence defendant required her to work during her time off as a condition of continued employment.

The court granted summary judgment on the FMLA interference claim holding that defendant had only engaged in de minimis and non-disruptive communications while she was on leave. Thus, plaintiff could not establish any prejudice from her limited communications with her employer while on leave. Conceding that there was a causal connection between her taking FMLA leave and demotion one day after returning from leave, the court found that her retaliation claim failed because defendant had a legitimate non-discriminatory reason for removing plaintiff from her position as Director of Nursing, and plaintiff had failed to put forth any evidence of pretext other than her disagreement with her most recent job evaluation.

***Herring v. Select Rehab., LLC*, 2024 WL 3495027 (M.D. Fla. July 22, 2024)**

Plaintiff, a physical therapy assistant diagnosed with cancer requiring surgery and chemotherapy, was terminated after five weeks of FMLA leave. She filed suit under the FMLA, among other claims, claiming that, although defendant provided her with five weeks of FMLA leave, it failed to accommodate her disability when she returned to work and terminated her in retaliation for requesting disability accommodations. Defendant moved to dismiss plaintiff's complaint.

The district court in the Middle District of Florida denied defendant's motion to dismiss. The court held that plaintiff's allegations that she informed her supervisor of her need for time off and that "[a]t the time of Plaintiff's request for intermittent leave, she remained eligible for approximately six and a half weeks of FMLA leave[,]" that she spoke with defendant's human resources about her need for intermittent FMLA leave, and that defendant interfered with her FMLA by not providing her with notification of her FMLA eligibility, was sufficient to state a claim of FMLA interference.

***Khan v. ELRAC, LLC.*, 2024 WL 1344694 (D. Conn. Mar. 29, 2024)**

Plaintiff brought suit against her former employer alleging FMLA interference and retaliation. Specifically, plaintiff alleged her employer: pressured her to return from maternity leave early, required her to provide 30 days' notice whenever she needed time off to attend to the health condition of her child, and engaged in a sham investigation to terminate her following her use of FMLA leave.

Defendant moved to dismiss. The court found that plaintiffs' FMLA retaliation claims were sufficiently pled given the temporal proximity between the end of her FMLA leave and her termination. However, the court dismissed plaintiff's interference claims, finding that plaintiff stated no additional facts to support her interference claim beyond those pleaded in support of her retaliation claim.

***Martin v. Avant Publ'ns, LLC*, 2024 WL 2785040 (M.D. Pa. May 30, 2024)**

Plaintiff was a newspaper editor who was primarily working remotely before defendant required her attendance in office. Plaintiff requested reasonable accommodations, and also emailed defendant's human resources department to request paperwork to file for FMLA leave. Four days later, plaintiff reiterated to defendant's human resources department that she was requesting leave under the FMLA. Defendant terminated plaintiff's employment, and plaintiff subsequently filed suit for age and disability discrimination, in addition to claims for FMLA retaliation and interference.

Defendant moved to dismiss plaintiff's FMLA claims, arguing plaintiff never filed the paperwork for her FMLA leave and accordingly was not entitled to any protection under the FMLA. The court interpreted this as a challenge to plaintiff's prima facie burden to show that plaintiff gave notice of her intention to take leave. Recognizing that the question of "proper notice" is a fact-intensive inquiry, the court declined to dismiss the FMLA claims at the motion to dismiss stage. Moreover, because plaintiff had alleged she requested paperwork to file for FMLA leave and reiterated that point, the court found it plausible that plaintiff sufficiently alleged "proper

notice." Accordingly, the court denied the motion to dismiss with respect to both the retaliation and interference claims.

***Mcloughlin v. Village of Southampton*, 2024 WL 4189224 (E.D.N.Y. Sept. 13, 2024)**

Plaintiff was a court clerk, supervised by a judge, for defendant Village. She worked for the judge for 11 years and became pregnant in September 2019. After she told the judge she was pregnant, the judge took numerous actions including moving her workstation to a back office, calling her repeatedly for work matters during her maternity leave, threatening to move plaintiff from full time to part time status, suggesting plaintiff find a different job, and more. Plaintiff brought suit in the Eastern District of New York against her former employer alleging interference and retaliation in violation of the FMLA; defendant moved to dismiss the interference claim in full and a portion of the retaliation claim which defendant alleged was barred by the statute of limitations.

The district court dismissed plaintiff's interference claim under the FMLA for failure to state a claim. The court reasoned that plaintiff did not establish a prima facie case because she did not allege she was denied benefits to which she was entitled under the FMLA. A denial of benefits under the FMLA can mean formal denial or discouragement, which occurs when an employee is actually discouraged from taking leave or when a reasonable employee would have been discouraged from taking leave. In this case, plaintiff never alleged she was dissuaded from taking leave. She was not formally denied leave or actually discouraged from taking leave, and the court reasoned that a supervisor's negative comments about pregnancy would not discourage a reasonable employee from taking leave.

Additionally, the court found that plaintiff alleged a plausible retaliation claim under the FMLA, but limited plaintiff's claim to conduct that occurred on or before the three-year statute of limitations period. The FMLA generally is subject to a two-year statute of limitations, but the statute of limitations is extended to three years if the employer's conduct was willful. The conduct is willful if an employer either knew or recklessly disregarded whether its conduct violated the FMLA, and the court explained that retaliating against an employee for exercising FMLA rights is "almost by definition" a willful violation. The court drew all inferences in plaintiff's favor and held that it is plausible that defendant's actions against plaintiff were taken knowingly and willfully, such that the three-year statute of limitation applies. The court also held that the continuing violations doctrine relating to statutes of limitation does not apply to the FMLA.

***Nache v. BNSF Railway Co.*, 2024 WL 945299 (C.D. Ill. Mar. 5, 2024)**

Plaintiff, a track maintenance laborer for defendant railway, sued under the Family Medical Leave Act, alleging that when defendant terminated plaintiff (1) defendant denied him the exercise of his FMLA rights and (2) retaliated against him for exercising his FMLA rights. Defendant filed a motion to dismiss the interference claim which the Illinois district court rejected.

The court held that plaintiff stated an FMLA interference claim because he alleged that defendant terminated him after he requested additional FMLA leave time as accommodation for a severe and life-threatening condition due to his disability. Defendant argued that plaintiff could not establish a prima facie case because he did not allege that defendant denied him FMLA benefits

to which he was entitled and, instead, alleged in his complaint that defendant granted his request. Drawing all inferences in favor of plaintiff, the court found that one could read plaintiff's allegation that he requested "additional medical leave" as referring to plaintiff's request for continued medical leave in February, rather than an additional request for FMLA leave beyond April 1, 2022, for which he was not entitled under the FMLA. The court found that plaintiff's allegations told a consistent story, that is, plaintiff asked for more FMLA leave in February as an accommodation for his disability, but defendant ignored or denied that request. The district court denied defendant's Rule 12(b)(6) motion to dismiss.

***Nash v. Advocate Aurora Health, Inc.*, 2023 WL 8718120 (N.D. Ill. Dec. 18, 2023)**

Plaintiff, a clinical certified medical assistant employed by defendant, sued under the Family Medical Leave Act, alleging that (1) defendant interfered with her FMLA rights and (2) retaliated against her for exercising her FMLA rights. Plaintiff alleged that while she was on approved FMLA leave related to her grandmother's health, defendant tried to retract the leave based on its false belief that plaintiff's grandmother had already died. She also alleged that while on approved leave for her own medical condition, defendant surreptitiously attempted to obtain plaintiff's private health information in hopes of finding a reason to terminate her. Plaintiff additionally alleges that she was unfairly singled out by defendant and interrogated about workplace issues upon her return to work from FMLA leave. Defendant moved to dismiss the interference and retaliation claims, asserting that the complaint was insufficiently pleaded. The Illinois district court disagreed.

Defendant argued (1) that plaintiff plead herself out of an FMLA interference claim by alleging she received FMLA benefits; and (2) that plaintiff was not prejudiced by any interference. As to the first assertion, the court agreed with plaintiff that denial of FMLA benefits is not required to demonstrate an FMLA interference violation, for interference or restraint alone is enough to establish a violation. Drawing all inferences in plaintiff's favor and assuming all well-plead allegations as true, the court held that plaintiff adequately stated a claim for FMLA interference. As to defendant's second assertion that plaintiff was not prejudiced by any interference, the court explained that while plaintiff may be required to show prejudice to be entitled to a remedy, she is not required to show prejudice to state a claim for FMLA interference.

The court also rejected defendant's request to dismiss the retaliation claim. Defendant argued that plaintiff did not allege that there was a causal connection between her protected activity and the adverse employment action. The court explained that a plaintiff is not required to know exactly what caused an adverse employment action prior to discovery. Plaintiff's allegations that within a few months of taking FMLA leave to care for her grandmother and then for herself, defendant interfered with those rights and then terminated plaintiff, is enough to survive a motion to dismiss.

***Neron v. Amedisys Holding, LLC*, 2024 WL 1072578 (D. Conn. Mar. 12, 2024)**

Plaintiff brought suit against her employer, a home health care services provider, under the Family Medical Leave Act alleging that that defendant (1) interfered with her FMLA rights and (2) retaliated against her for exercising her FMLA rights. Defendant moved for summary judgment

on both claims. The Connecticut district court granted summary judgment in favor of defendant on both counts.

The court explained that, in the interference context, plaintiff must show that she was prejudiced by the interference. The court declined to address the interference elements because plaintiff failed to present any evidence showing prejudice. Noting that the Second Circuit has not explicitly addressed the issue, the court explained that other circuit courts and district courts within the Second Circuit have held that an employer may discharge an employee who has requested or taken FMLA leave so long as the reason is independent from FMLA leave. The court reasoned that the undisputed evidence established that plaintiff was terminated for committing a "Critical Offense Violation" warranting immediate termination, and there was nothing in the record showing defendant considered plaintiff's need for FMLA leave when it terminated her.

The court also dismissed the retaliation claim. The court held that, while it presumes that plaintiff established a *prima facie* case because plaintiff discussed FMLA leave with defendant and was terminated within a few short weeks thereafter, her retaliation claim nonetheless fails because defendant legitimately terminated her for violating its policies and she has submitted no evidence that it considered her FMLA leave whatsoever in its decision-making process.

***Ngo v. DeJoy*, 2024 WL 358285 (W.D. Wash. Jan. 31, 2024)**

Plaintiff, a United States Postal Service worker, sued her employer, alleging interference with her FMLA rights. Weeks before plaintiff exhausted her FMLA leave in 2020, she requested annual leave for the period from December 15, 2020, through January 7, 2021. Plaintiff asserts that her supervisor denied her annual leave request because plaintiff had taken, or was in the process of taking, three months of FMLA leave. Moreover, plaintiff contends that her supervisor knew she had instead taken sick leave, but nevertheless deemed her AWOL. Defendant sought summary judgment, claiming that plaintiff was no longer eligible for FMLA leave when she was marked as AWOL, that plaintiff cannot show a causal connection between her exercise of FMLA rights and the disciplinary letters issued to her, and that plaintiff's FMLA interference claim relating to the letters should be dismissed because plaintiff cannot prove damages.

The Washington district court denied summary judgment. The court held that the fact that an employee has temporarily run out of FMLA leave time does not give the employer freedom to discipline the employee for having exercised FMLA rights. Regarding causation, the court found that both letters followed shortly after plaintiff took FMLA leave, and whether plaintiff's use of FMLA leave played a role in defendant's decision to issue the letters constitutes a question of fact that cannot be decided on summary judgment. Finally, the court noted that if plaintiff prevails on her FMLA interference claim that the letters were issued because she took FMLA leave, she might be entitled to equitable relief even if there was no economic loss. Thus, the district court concluded that there was a triable issue concerning whether defendant's conduct interfered with plaintiff's FMLA rights by attaching negative consequences to plaintiff's exercise of those rights.

***Passante v. Cambium Learning Group*, 2024 WL 4171026 (E.D.N.Y. Sept. 12, 2024)**

Plaintiffs brought suit against her employer under, *inter alia*, the FMLA for claims of FMLA interference and retaliation. Plaintiff began working for Defendant as the Director of

Strategic Communications and Marketing Services. In February 2022, Plaintiff allegedly passed out after a remote meeting due to persistent migraine headaches, dizziness, and lingering damage from a traumatic brain injury sustained in 2019. Plaintiff communicated with HR and was urged to take a leave of absence. Plaintiff requested leave under the FMLA, defendant approved plaintiff's request for leave, and her leave of absence began on February 11, 2022. Prior to her return, plaintiff attempted to speak with her supervisor about extending her leave and potential reasonable accommodations. Defendant allegedly refused and sent "threatening" emails notifying plaintiff that if she failed to return to work that she would be terminated, and when plaintiff failed to return, she was fired. Plaintiff alleges that, after her termination, Defendant added "multiple [d]irector-level positions to handle the responsibilities that [Plaintiff] was handling alone," and hired "multiple younger individuals" to fill these roles. Defendant filed a motion to dismiss under Rule 12(b)(6).

Plaintiff alleged that defendant failed to reinstate plaintiff to her prior position and terminated her in response to her exercise of rights under the FMLA. The New York district court held that plaintiff failed to state a claim of FMLA interference because she presented no evidence that defendant failed to allow her rights under the FMLA, and that she actually exhausted the full amount of her leave and so failed to establish that she was denied any rights to which she was entitled.

With respect to the retaliation claim, the court found that plaintiff sufficiently raised a claim. The court held that although an employer can replace an employee who has not returned to work at the end of the FMLA leave, they may do so only as long as the employer is not doing so to punish the employee for exercising her FMLA rights. Defendant terminated plaintiff's employment seven days after the end of plaintiff's FMLA period, and although defendant claims that it had a legitimate reason for doing so, the temporal proximity between the end of plaintiff's FMLA leave period and her termination is sufficient to raise an inference of retaliatory intent. Therefore, the court denied defendant's motion to dismiss plaintiff's FMLA retaliation claim.

***Rolison v. Edgewood Co., Inc.*, 2024 WL 2847187 (E.D. Pa. June 4, 2024)**

Defendant moved to dismiss plaintiff's claim alleging FMLA interference and retaliation. Plaintiff sought medical attention after being injured on the job and immediately went on leave. While on leave, he remained in constant contact with his foreman about his anticipated return date, and two weeks later, asked his employer to open a workers' compensation claim. A month later, plaintiff learned his workers' compensation claim was denied (and that he had been terminated) due to absenteeism.

Defendant argued that it had not interfered with plaintiff's FMLA rights because plaintiff did not notify defendant-employer of his need to take leave due to a serious health condition. The court found that plaintiff's allegations plausibly state the contrary, since he had notified them of his injury, kept in contact with his supervisor, and requested to be put on workers' compensation. Defendant also argued that plaintiff did not properly plead a causal or temporal link between his injury and his termination, but the court held that plaintiff did not need to plead a causal or temporal link to survive defendant's motion. Rather, plaintiff only needed to show that his FMLA benefits were denied, which he did.

***Smith v. Magic Burgers LLC*, 2023 WL 9196714 (M.D. Fla. Nov. 16, 2023)**

Plaintiff was employed by Defendant as a general manager at Burger King. When plaintiff was diagnosed with COVID-19 and sought time off under the FMLA to recover and quarantine, the request was denied. Plaintiff alleged that when he informed defendant of his diagnosis, defendant accused him of faking it. Plaintiff then informed defendant that he would no longer be reporting to work because of his need for unpaid FMLA leave to treat his condition. Plaintiff was then fired.

Plaintiff brought a claim for both FMLA retaliation and interference. When defendant failed to respond, plaintiff moved for default judgment. The court concluded that plaintiff's allegations were sufficient to state a claim for compensation under both theories. Plaintiff alleged that defendant representative denied his right to leave and that he was terminated in retaliation for his request. The magistrate judge recommended that the court grant the motion for default judgment and award plaintiff $27,459.03 in damages, representing backpay, liquidated damages, and costs. On review, the district court judge confirmed and adopted the magistrate's report and recommendation, and awarded the damages sought.

***Spokoiny v. Univ. of Wash. Med. Ctr.*, 2024 WL 69735 (W.D. Wash. Jan. 5, 2024)**

Plaintiff was employed as a nurse while simultaneously pursuing a doctorate at defendant hospital. As plaintiff approached her final semester, defendant noticed that she was not meeting performance expectations. When defendant held a performance review, plaintiff received her lowest performance rating. Plaintiff continued work for almost a whole year after that low rating. Plaintiff ultimately resigned.

Plaintiff then brought a myriad of employment law related claims against defendant, including an FMLA interference claim. Defendant moved for summary judgment on all claims. Plaintiff alleged that defendant interfered with her FMLA rights by routinely and systematically denying her time off, however, plaintiff failed to show any specific instances of defendant denying a request for FMLA leave. The court thus granted defendant's motion for summary judgment on the FMLA interference claim.

***Tieu v. New York City Econ. Dev. Corp.*, 717 F. Supp. 3d 305 (S.D.N.Y. 2024)**

Plaintiff sued her former employer, former supervisor, and former employer's chief operating officer for, *inter alia*, interference and retaliation under the FMLA. Plaintiff alleged defendants interfered with her FMLA rights by initially refusing to sign her leave form, criticizing her for her communication and delegation of tasks to others around the time she would be taking leave, and failing to restore her position in full when she returned to work. Plaintiff further alleged that defendants took adverse employment actions against her and that her exercise of FMLA rights was a "motivating factor" in such adverse employment actions. Defendants moved for summary judgment on all counts. The district court analyzed the interference and retaliation claims separately.

For plaintiff's interference claims, the district court found that she could not establish a FMLA interference claim. First, the district court explained that plaintiff failed to show any harm from her supervisor's initial refusal to sign her leave form noting that the form was signed less

than a week later and that administrative delay without a harm is not actionable. Second, the district court found that the allegedly disparaging remarks of plaintiff's supervisor could not constitute discouragement because she had not attempted to assert her FMLA rights at that time and because her supervisor's comments were directed toward her job performance and communication with colleagues; the comments, therefore, were unrelated to her FMLA leave. Third, the district court found that plaintiff was not protected by the FMLA's restoration right because the right only extends to employees who are able to perform all the essential functions of their position when their FMLA leave expires. When her FMLA leave expired, plaintiff could not perform *any* essential functions of her position because she remained on leave.

For plaintiff's retaliation claim, the district court analyzed her allegations of FMLA violations, along with other claims, under the *McDonnell Douglas* burden-shifting framework stating that to show the employer's reason was pretextual, plaintiff must establish that her exercise of FMLA rights was a "motivating factor" for the adverse employment actions she experienced. The district court found that she had presented a *prima facie* claim of retaliation regarding her two disappointing performance reviews and the reduction of her workload when she returned to work. Defendants justified the adverse employment actions by stating that her job performance needed to improve, specifically in her communication, and that her reduction in work was a result of her reduction in hours. The district court did not find plaintiff's arguments for pretext convincing, noting that a conflict between sworn testimony and conjecture was insufficient to create a genuine issue of fact and that it would defer to the employer's internal processes without plaintiff proffering any evidence as to how it was discriminatory. Accordingly, the district court granted defendants' motion. Plaintiff has appealed to the Second Circuit.

***Ziccarelli v. Dart*, 2024 WL 3740602 (N.D. Ill. Aug. 7, 2024)**

Plaintiff alleged that his former employer, the Cook County Sheriff's Office, interfered with his rights under the FMLA by discouraging him from using leave while he still had 176 hours of FMLA leave remaining and causing him to resign his employment,. After a two-day trial, a jury found in plaintiff's favor, awarding $240,000.00 in damages. Defendant filed a motion for judgment as a matter of law, a new trial, or remittitur of the damages award, arguing 1) no reasonable jury could find that defendant's action "would have discouraged a reasonable employee from taking FMLA leave and cause him to be prejudiced"; and 2) because plaintiff could, and did not intend to, return to work at the end of his FMLA leave, the FMLA does not apply.

In 2016, defendant approved plaintiff for intermittent FMLA leave of up to seven days per month for various conditions including PTSD. Over time, plaintiff's PTSD worsened. Eventually, his doctor recommended that he undergo an eight-week hospitalization program. In response to his doctor's recommendation, plaintiff contacted defendant's FMLA coordinator. Plaintiff testified that he gave his name, explained that his doctor wanted him to take the rest of his FMLA leave, and asked how much FMLA leave he had remaining. Plaintiff further testified that he was told "[y]ou used serious amount of time of FMLA. Do not use any more or you will be disciplined." According to plaintiff, the call lasted two to three minutes. Plaintiff resigned his employment within a week. During the period of time between the call and his resignation, however, plaintiff used "a little bit" of FMLA leave.

To succeed on his FMLA interference claim, plaintiff needed to present evidence of prejudice. The court concluded that plaintiff's evidence was insufficient on this point. Notwithstanding the threats attributed to defendant's FMLA coordinator, plaintiff took FMLA leave after his phone call with the coordinator, and he was not disciplined for taking that leave (or any prior leave). According to the court, this fact negated any reasonable inference that the coordinator's statements in the phone call with plaintiff caused him not to take FMLA leave.

Summarized elsewhere

***Arce v. Honeywell Int'l Inc.*, 2024 WL 405065 (D. Ariz. Feb. 3, 2024)**

***Donovan v. Nappi Distribs.*, 703 F.Supp.3d 135 (D. Me. 2023)**

***Eastmond v. Galkin*, 2024 WL 404498 (E.D. Pa. Feb. 2, 2024)**

***Fluellen v. City of Philadelphia*, 2024 WL 1468331 (E.D. Pa. 2024)**

***Foster v. Credit One Bank, N.A.*, 2024 WL 4625291 (9th Cir. Oct. 30, 2024)**

***Kolbe v. NSR Marts, Inc.*, 2024 WL 474824 (D. Md. Feb. 7, 2024)**

***Maier v.* 721 F. Supp. 3d 693 (N.D. Ill. 2024)**

***Martin v. Penske Logistics*, 2024 WL 2853951 (N.D. Tex. June 4, 2024)**

***Mays v. Newly Weds Foods, Inc.*, 2024 WL 1181461 (N.D. Miss. Mar. 19, 2024)**

***McBeath v. City of Indianapolis*, 2024 WL 1885849 (S.D. Ind. Apr. 29, 2024)**

***McLaughlin v. Walmart*, 2023 WL 7706262 (E.D. Pa. Nov. 15, 2023)**

***McLaurin v. Georgia Dep't of Nat. Res.*, 739 F.Supp.3d 1254 (N.D. Ga. 2024)**

***Monroe v. Rocket Mortgage*, 2024 WL 4288066 (M.D. Fla. Sept. 25, 2024)**

***Morris v. Plymouth Court SNF*, 2024 WL 1348350 (E.D. Mich. 2024)**

***Nunez-Renck v. Int'l Bus. Mach. Corp.*, 2024 WL 1495787 (N.D. Tex. Apr. 5, 2024)**

***Stevenson v. Kroger Co. of Mich.*, 2024 WL 625211 (E.D. Mich. Feb. 14, 2024)**

2. Interference Claims

***Anderson v. Lawrence Hall Youth Servs.*, 2024 WL 1342586 (7th Cir. Mar. 29, 2024)**

Plaintiff was employed by defendant in several positions, mostly recently as a full-time residential treatment specialist. She was injured on the job and applied for medical leave. Defendant granted plaintiff's medical leave and approved extensions beyond the FMLA's twelve week maximum. When the leave was set to expire, plaintiff told defendant she could no longer perform the residential treatment specialist job functions or any other direct-care position.

Defendant offered plaintiff a different job which she also rejected. Having no role suitable for plaintiff, defendant terminated her employment.

Plaintiff sued defendant for violations of the ADA and the FMLA in response to her termination. The district court for the Northern District of Illinois granted defendant's motion for summary judgment on the FMLA claim, holding that (1) defendant did not interfere with plaintiff's use of the FMLA claim, noting defendant granted plaintiff an extension on her leave; (2) plaintiff was not entitled to reinstatement because she could no longer perform the essential functions of her job; and (3) there was not a causal connection between plaintiff's use of the FMLA leave and her termination.

The Seventh Circuit Court of Appeals affirmed the lower court's decision. The court rejected plaintiff's interference claim, holding that she had no right to reinstatement because she was unable to perform tasks required for her job. It rejected the retaliation claim by finding that plaintiff relied only on timing as evidence that the termination was caused by her FMLA leave. Rather, the court concluded that the evidence indicated defendant terminated plaintiff because she could no longer do the job.

***Baker v. Penn State Health Holy Spirit Med. Ctr.*, 2024 WL 2055002 (M.D. Pa. May 8, 2024)**

Plaintiff began working for defendant as an ultrasound technician in late 2020. Plaintiff injured her wrist while performing an ultrasound in April 2021 and underwent surgery for the injury in December 2021. After the surgery, defendant accommodated plaintiff by having her serve in a "light duty" greeter position. In July 2022, defendant claimed the position was no longer available and told plaintiff to begin taking her 12 weeks of FMLA leave. Plaintiff had requested intermittent FMLA leave prior to July 2022 to take care of a family member, which was ongoing at the time. Defendant terminated plaintiff's employment in September 2022 without attempting to accommodate her disability. Defendant later claimed that this was due to a technical error that had been corrected. Plaintiff said the correction was inadequate because she had received no compensation or benefits while she was out of work.

Plaintiff made two FMLA claims. First, she made an FMLA interference claim on the grounds that defendant interfered with her ability to use intermittent leave by requiring her to take continuous FMLA leave. Defendant sought dismissal of this claim, claiming that since plaintiff had received the 12 weeks of continuous FMLA leave, defendant had not actually denied her any benefits. The court denied defendant's motion, finding that plaintiff's interference claim could survive summary judgment since plaintiff's allegations indicated that her employment was terminated before she could pursue her full intermittent leave.

Plaintiff also made an FMLA retaliation claim based on defendant's termination of her employment. Defendant also sought dismissal of that claim, arguing that since the termination was a mistake that had been rectified, plaintiff had not actually suffered an adverse employment action. Defendant also argued that plaintiff's allegation that she had been forced to take continuous leave was conclusory and that the allegations did not establish a causal link between the mistaken termination and her invocation of the FMLA. The court also denied defendant's motion on this claim, concluding that plaintiff's allegations that she requested and received intermittent FMLA leave were sufficient to establish that she invoked her rights, and that she sufficiently identified an

adverse employment decision by showing that she had lost wages because of her termination. Finally, on the causation issue, the court found that "the timing of Holy Spirit's alleged actions is sufficient to render the amended complaint facially plausible at this stage."

***Bess v. Dental Scheduling Ctr. Inc.*, 710 F.Supp.3d 1295 (M.D. Ga. 2023)**

Plaintiff employee sued defendant employer for FMLA retaliation and interference. Plaintiff suffered from a dental condition and called in sick for one week. Defendants did not inform Plaintiff of leave offered under the FMLA. Furthermore, while plaintiff was on leave, she received disciplinary action for conduct alleged during the year leading up to her leave. when Plaintiff returned to work, she was terminated. Plaintiff sued defendant, including for FMLA interference and retaliation, and defendant moved to dismiss plaintiff's claims.

The court dismissed plaintiff's FMLA retaliation claim for failure to state a claim under Rule 12(b)(6), citing insufficient allegations that her termination was motivated by retaliatory intent for exercising FMLA rights. However, the court allowed her FMLA interference claim to proceed, noting that she sufficiently alleged her entitlement to FMLA benefits was denied or interfered with, primarily due to the employer's failure to provide proper FMLA notification and disciplinary actions taken while she was on FMLA leave. The court further noted that although failure to notify is only a technical infraction and is therefore insufficient to support a claim of FMLA interference, since the failure to notify allegation is combined with the allegation that she received a second disciplinary notice while on leave, that sufficiently states a claim for interference.

***Black v. Swift Pork Company*, 113 F.4th 1028 (8th Cir. 2024)**

Plaintiff brought suit for interference and discrimination under the FMLA. Plaintiff was a skilled mechanic at one of defendant's meat-processing plants. Over the years, plaintiff had taken FMLA leave to care for his wife, who had severe cardiovascular disease. In total, plaintiff had taken leave 158 times in three years, and defendant had not objected. The last time plaintiff attempted to take leave, his employment was terminated. Plaintiff claims that he went home to care for his sick wife. Defendant says that he stormed off after a supervisor gave him a different assignment than usual. The district court granted summary judgment for defendant on all issues.

The court affirmed the district court's holding on the discrimination claim, finding no evidence of discrimination. Plaintiff had taken FMLA leave 158 times in the nearly three years before he was fired. This long-running use of it "without repercussions" undercut any inference that defendant suddenly decided to discriminate against him.

With respect to the interference claim however, the appellate court reversed and remanded. Plaintiff claimed that he told his supervisor he was going "home on FMLA" because his wife was "not feeling very good." Although he did not provide much in the way of details, the court found that a jury could reasonably conclude, based on the symptoms she was experiencing and the doctor's paperwork, that his presence at home was "medically necessary." Defendant told another story, that plaintiff initially decided to come into work, even though his wife had already been experiencing chest pains, that he first tried to use vacation days rather than FMLA leave, and that

he expressed unhappiness over the new assignment to his supervisor. The appellate court found that there was a genuine dispute of material fact for a jury to resolve.

***Bunnell v. William Beaumont Hosp.*, WL 4235469 (E.D. Mich. Sept. 19, 2024)**

Plaintiff worked as a cardiac ultrasonographer for defendant. Plaintiff was temporarily removed from the labor pool in April 2020 and then eventually furloughed from her employer. In June 2020, plaintiff took FMLA leave after giving birth to her child. She was cleared to return to work in October 2020, but defendant did not have sufficient work to take her off furlough. In 2021, defendant instituted a policy that anyone who did not have a position by February 5, 2021 would be permanently laid off. Plaintiff did not accept any position she was offered before the deadline and was subsequently permanently laid off.

Plaintiff filed a claim for FMLA interference. Defendant moved for summary judgment on plaintiff's claims, arguing that plaintiff was not entitled to her return to her position because she was furloughed when she went on parental leave. The court agreed, holding that plaintiff was properly reinstated to furloughed status following her FMLA leave, but was not entitled to any specific position within the company. In addition, the court held that plaintiff was not entitled to be notified by defendant of potential job openings when she was on parental leave, even if this put her at a slight disadvantage compared to other employees.

***Clark v. Marceno*, 2024 WL 3470293 (M.D. Fla. Jul. 19, 2024)**

Plaintiff sued her former employer for FMLA interference and retaliation following her termination while she was out on a short leave period for a surgery. When she initially requested leave for her surgery, defendant's human resources director told plaintiff that she would "hold off" on categorizing her leave as FMLA and requiring FMLA paperwork given that the leave needed was only seven working days. At the same time, defendant was considering a reduction in force (RIF) that ultimately eliminated plaintiff's position, of which plaintiff was notified while she was on medical leave.

The district court for the Middle District of Florida granted defendant's motion for summary judgment on plaintiff's interference claim, rejecting plaintiff's arguments that defendant instructed plaintiff not to submit FMLA leave requests and denied her request to use FMLA benefits for her surgery. In an email exchange, plaintiff stated that her leave had already been approved, that emailing was a mere formality, and that it was defendant's practice not to require FMLA formalities for a leave of seven days or less. The court held that plaintiff's FMLA leave was not denied or discouraged, and that, instead, she was simply not required to submit supporting documentation from her doctor. The court further held that plaintiff failed to identify damages she suffered because her FMLA leave was designated as administrative leave with pay rather than sick leave. The court further rejected plaintiff's late-raised arguments regarding requiring FMLA notices of eligibility and rights, finding that plaintiff failed to identify any harm suffered

Similarly, the court granted summary judgment on plaintiff's FMLA retaliation claims. The court held that despite the proximity between the leave request and her termination, plaintiff failed to prove that her termination was pretextual or that defendant's actions were motivated by an impermissible retaliatory or discriminatory animus because the right to be restored to a position

post-FMLA leave is not absolute and a RIF is a legitimate reason to eliminate plaintiff's position. Further, defendant's decision to eliminate positions was already underway long before plaintiff requested leave.

***Cypher v. J.V. Mfg. Co.*, 2024 WL 3827765 (W.D. Pa. Aug. 14, 2024)**

Plaintiff brought suit under the FMLA for interference and retaliation. Defendants moved to dismiss both claims. Plaintiff applied for and received 12 weeks of leave under the FMLA. Prior to the end of the FMLA leave, defendant reminded plaintiff of the impending expiration of his FMLA leave and that pursuant to its workplace policy, plaintiff must obtain a "fitness-for-duty certification" from his physician prior to his return to work. Plaintiff was unable to obtain this certification prior to the end of his 12 weeks of leave. However, plaintiff submitted documentation confirming the conclusion of his FMLA leave, as well as records regarding taking leave pursuant to short-term and long-term disability. Before plaintiff obtained his "fitness-for-duty certification" and return to work, his employment was terminated for misrepresentation of his ability to return to work when he was spotted walking around a corn maze with his family on his day off.

Defendants argued plaintiff did not state an FMLA interference claim because he did not allege that he requested and was denied FMLA leave. Rather, he had requested and was granted FMLA leave that expired, after which he lost all of his FMLA rights, including the right to reinstatement. The court held the facts in this case were too complicated and not proper for resolution on a motion to dismiss; thus, plaintiff sufficiently stated a claim for FMLA interference.

Regarding plaintiff's retaliation claim, defendants argued that a three-month time frame is too lengthy to support temporal proximity for purposes of causation. However, defendants did not cite authority to support their argument; therefore, the court denied the motion to dismiss on the FMLA retaliation claim.

***Decou-Snowton v. Jefferson Par.*, 2024 WL 1555424 (E.D. La. Apr. 8, 2024)**

Plaintiff, a probation officer, requested FMLA leave to care for her husband's serious health condition. When her leave time expired, plaintiff requested additional FMLA leave, which defendants denied, but allowed her to take leave as an ADA accommodation. When plaintiff failed to return to work following that leave, she was sent a letter presuming her resignation. Plaintiff filed suit against defendant parish and two individuals alleging interference and retaliation claims under the FMLA. Defendants moved for summary judgment on both claims. The district court for the Eastern District of Louisiana granted defendants' motion for summary judgment and dismissed plaintiff's claims. Plaintiff also moved for partial summary judgment, but the court ruled plaintiff's motion was moot.

Defendants argued that plaintiff could not establish a claim for FMLA interference because she had received the full 12 week leave provided for by the FMLA. The court found that plaintiff did not dispute that she received the full 12 weeks of the FMLA leave, but claims that her rights were interfered with because defendant did not provide her notice of its decision within five days of her FMLA leave request, defendant called her husband's doctor in violation of the FMLA, defendant started monitoring her Facebook account because defendant did not believe she was being honest about her need for leave time, and because during her civil service appeal of her

presumed resignation, defendant subpoenaed records regarding her travel while she was on leave. The court rejected plaintiff's argument, holding that because plaintiff did not claim that her FMLA rights were impaired or prejudiced in any way, nor did she claim she suffered any injury aside from the alleged retaliation, plaintiff presented no genuine issue of material fact as to whether defendant interfered with her FMLA rights.

For her FMLA retaliation claim, plaintiff argues that she experienced retaliation for taking FMLA leave because of her separation from employment by defendant a few months after her benefits were cut off and for the same reasons she claims defendants interfered with her FMLA right. Defendants argued that plaintiff failed to show the decision to separate her from employment was made due to her request for leave or that she was treated less favorably than an employee who had not requested leave. Defendant also argued that plaintiff could not establish temporal proximity as her presumed resignation occurred six months after she requested FMLA leave and 12 weeks after her FMLA leave expired. Additionally, defendant pointed out the leave without pay that plaintiff received after the expiration of her FMLA leave was based upon her own health condition and not her husband's condition, and that there was a legitimate reason for plaintiff's presumed resignation. The court agreed with defendants and found no factual basis for connecting the presumed resignation to plaintiff's request for FMLA leave. The court reasoned that over three months had passed between the expiration of plaintiff's FMLA leave and the date she was presumed to have resigned as she did not return to work and did not claim she was able and willing to return to work.

***Glynn v. Village Practice Mgmt. Co., Inc.*, 2024 WL 1886924 (N.D. Ill. Apr. 30, 2024)**

Plaintiff sued her former employer, alleging defendant interfered with her FMLA rights and retaliated against her in violation of the FMLA. Defendant moved for summary judgment which the court granted in part.

Plaintiff was employed by defendant as its Director of Healthcare Analytics for the New Hampshire market. Plaintiff had previously been diagnosed with major depression, generalized anxiety disorder and Sjrogen's Syndrome. Prior to accepting employment, she discussed her medical conditions with the VP and General Manager for that market and requested accommodations. He agreed she could have flexible hours and work from home 2-3 days a week.

Defendant was in the process of searching for an additional analyst to support plaintiff in her role. At that time, plaintiff inquired about using intermittent FMLA leave but was told she was ineligible because she had not been employed for a year. After becoming eligible, she completed and sent an application for FMLA leave. The New Hampshire president emailed her supervisors that the company needed to move quickly on hiring an additional analyst because they were not going to get much from plaintiff, as the "FMLA musical chairs have started."

Plaintiff submitted her initial FMLA leave request which was approved and extended twice. She complained that defendant was hostile and cold towards her upon her return from leave. Due to her major depression, plaintiff met with her doctor opened a new claim for short term disability to take additional FMLA leave to allow for her newly prescribed medication to become effective. plaintiff requested an additional four and one-half months of FMLA leave but was granted up to three weeks of leave to get her medications adjusted. Defendant's supervisor

prepared an internal memo indicating the company could not support 16 weeks of additional leave and that termination was justified because of performance.

On her FMLA claims, defendant asserted that it never interfered with plaintiff's ability to request or take FMLA leave. The court held the FMLA interference claim failed because plaintiff took FMLA leave until it ran out, but that a triable issue of fact existed on her retaliation claim due to the proximity of time between her return from the second FMLA leave and termination.

***Haran v. Orange Bus. Servs., Inc.*, 2024 WL 3567150 (S.D.N.Y. July 29, 2024), *appeal filed* No. 24-2312 (2d Cir. Sept. 4, 2024)**

Plaintiff, a senior account manager at a telecommunications company, began requesting, in late 2020 and early 2021, leave to care for her daughter and for her mother, all of which were granted by her employer. Plaintiff believed that, as a result, she came under heightened scrutiny and pressure at work, feeling intimated and avoiding taking additional leave in response. Twelve days after taking her most recent half-day leave to care for her mother, plaintiff's employment was terminated. Throughout this time, she received a "2-Improvement Needed" performance evaluation for the second half of 2020 after having received a "3-Fully Successful" performance evaluation for the first half of 2020.

Her employer moved for summary judgment, arguing that it had never denied plaintiff's requests for leave, none of which were approved under the FMLA. The court agreed, granting summary judgment to the employer on plaintiff's FMLA interference claim because she did not introduce sufficient evidence that she was denied benefits under the FMLA. The court further ruled that plaintiff failed to generate a fact question that she was discouraged from using leave, as she offered only conclusory statements that she would have taken more leave rather than identifying specific instances in which she was dissuaded from doing so. Furthermore, plaintiff's FMLA retaliation claim failed because she did not establish that she exercised rights protected by the FMLA. Instead, plaintiff took non-FMLA paid leave to care for her mother and daughter and was given all of the time off she requested.

***Harris* v *August Eichhorn Center for Adolescent Care.* 2024 WL 2330126 (S.D.N.Y. May 20, 2024)**

Plaintiff was terminated during the early stages of the 2020 Covid pandemic and filed suit claiming that the termination interfered with her E-FMLA and/or traditional FMLA rights. Disputes of fact existed on the following issues: 1) the timing of her FMLA request as compared to the effective date of E-FMLA; 2) the date of her termination; 3) the date plaintiff learned of her termination; and 4) why she continued to work from home for relatively significant periods after the employer claimed she had been terminated. Plaintiff also alleged she was retaliated against because defendant gave negative information about her performance to future prospective employers.

The court found that substantial disputes of fact precluded summary judgment on the interference claim and required a jury trial.

However, the court granted summary judgment on plaintiff's retaliation claim, holding that the FMLA is not so expansive as to apply to negative assessments shared by a former employer

with a prospective employer. The court held that an employer's negative comments to a third party after an employee's termination are remote to the question of whether an employee would be dissuaded from taking FMLA in the first instance.

***Hurlow v. Toyota Motor N. Am., Inc.*, 2024 WL 689961 (N.D. Ill. Feb. 20, 2024)**

Plaintiff took 12 weeks of FMLA leave for the birth of his daughter. Plaintiff alleged that defendants interfered with the exercise of his FMLA rights by failing to consider him for promotions while he was on leave. On plaintiffs' interference claim, the court reasoned that plaintiff failed to offer evidence he was prejudiced since he testified he did not apply for the position because he did not have access to the company's job posting system. There was no evidence from which a reasonable jury could find a connection between plaintiff's decision to take leave and the fact that he did not get the sought-after position where he failed to apply.

Plaintiff's FMLA retaliation claim also failed. Plaintiff alleged that the adverse actions he suffered for taking FMLA included the employer cancelling his reservation for a conference and giving him a company car with more mileage and damage than the one he had picked out. The court reasoned that these facts, alone, would not dissuade a reasonable employee from exercising FMLA rights. Even assuming that plaintiff could articulate an adverse action related to a denied promotion, all evidence adduced in the case demonstrated that three candidates ahead of plaintiff in the promotional process were more qualified for the position.

The court granted summary judgment to the employer.

***Hurt v. Greene Cnty. Tech Sch. Dist.*, 2024 WL 382192 (E.D. Ark. Jan. 31, 2024)**

Plaintiff teacher had an anxiety attack in her classroom and her principal sent her home. The principal placed plaintiff on FMLA leave and claimed plaintiff stated that she was having suicidal thoughts and could not get her medications refilled. Plaintiff denied those statements and argued she was placed on FMLA leave involuntarily, thus interfering with her rights under the FMLA. The court held that plaintiff had not stated an actionable interference claim because the FMLA does not create a cause of action for being forced to take FMLA leave involuntarily.

***King v. IC Group, Inc.*, 701 F.Supp.3d 1186 (D. Utah 2023)**

Plaintiff filed an action alleging FMLA retaliation and interference against her former employer. Defendant moved for summary judgment. Summary judgment was granted on plaintiff's retaliation claims but denied on plaintiff's interference claim.

On retaliation, the district court found that plaintiff could not present evidence that the employer's legitimate non-discriminatory motive for the termination — customer dissatisfaction complaints related to plaintiffs' work — were pretextual where plaintiffs' only evidence of pretext was temporal proximity between her FLMA leave and the employer's termination decision. Plaintiff must present evidence of temporal proximity plus circumstantial evidence of retaliatory motive to survive summary judgment, and the court found that plaintiffs' factual allegations fell short.

On interference, the court found that King adduced sufficient evidence for a jury to decide whether defendant interfered with her FMLA rights by failing to give her adequate notice of her FMLA rights. Specifically, after learning of an FMLA qualifying event, the employer failed to give her the notice required by law, and as a result, she was unaware she could use accrued paid vacation to cover her leave. The court found these factual allegations were sufficient for the FMLA interference claim to be tried to a jury.

***LaRose v. Am. Med. Response of Connecticut, Inc.*, 718 F. Supp. 3d 145 (D. Conn. 2024)**

Plaintiff worked as a full-time paramedic. Plaintiff took FMLA leave for several injuries. He exhausted his FMLA leave but remained on non-FMLA extended leave under the employer's policy. He later agreed to return to work as a per diem employee and was fired for repeatedly failing to meet a requirement of working at least one shift per week. He brought suit alleging, among other things, FMLA interference because he was not returned to a full-time position after his FMLA leave expired.

The district court granted summary judgment for the employer because failure to reinstate is not a cognizable violation of the FMLA where the employee remains on leave beyond the expiration of FMLA leave. Because the undisputed facts demonstrated that he was notified his 12 weeks of FMLA expired, and plaintiff received and took extended leave after the expiration of his protected leave, no reasonable jury could find that defendant engaged in interference.

***Lloyd v. Baltimore Police Department*, 2024 WL 4264902 (D. Md. Sept. 20, 2024)**

Plaintiff, a Sergeant with the Baltimore Police Department, brought suit alleging FMLA interference and retaliation after he was medically suspended after he submitted FMLA paperwork, and then transferred while on FMLA leave. In ruling on a motion to dismiss, the district court in Maryland first determined that plaintiff stated an interference claim because he was transferred involuntarily, and to a detrimental position, while on FMLA leave. The court also found that plaintiff's medical suspension shortly after he submitted FMLA paperwork established interference, because while on medical suspension, he was not entitled to overtime work.

Then, the court denied the motion to dismiss the FMLA retaliation claim because plaintiff's transfer was sufficiently alleged as an adverse action, as was his medical suspension. The court also found there was a temporal causal connection, as he was medically suspended 12 days after submitting his FMLA paperwork, and was transferred one week after his leave was approved.

***Mahran v. Cty. of Cook*, 2023 WL 8004280 (N.D. Ill. Nov. 17, 2023)**

Plaintiff was employed by a county hospital system and took intermittent leave under the FMLA for a period of weeks in early 2020 before a longer period of continuous leave in late 2020 into January 2021. Two days after returning to work in January 2021, defendant terminated plaintiff's employment. Plaintiff filed suit claiming denial of benefits under the FMLA. Defendant moved to dismiss plaintiff's complaint for failure to state a claim.

The district court denied defendant's motion to dismiss plaintiff's FMLA interference claim. The court agreed that plaintiff need only show that defendant interfered with his use of benefits generally at the motion to dismiss stage. Defendant argued plaintiff could not establish he

was "entitled to leave under the FMLA" because he did not suffer from a serious health condition. But plaintiff alleged he had provided doctor's notes stating diagnoses of asthma, morbid obesity, sleep apnea, and panic attacks before he took continuous FMLA leave. Plaintiff also alleged he provided certification under the FMLA when he took intermittent leave. The court found these allegations sufficient to survive a motion to dismiss on the element of whether plaintiff was entitled to leave under the FMLA.

Defendant also argued that the fact plaintiff was provided leave defeats any claim that he was denied benefits. The court however relied on plaintiff's allegations that an individual supervisor restricted plaintiff's use of leave to find a plausible claim for FMLA interference. The court held that the fact an employee is ultimately approved for leave under the FMLA does not automatically absolve an employer from liability for alleged interference with the attempt to obtain that leave. Because plaintiff alleged facts that would plausibly entitle him to relief, the court denied defendant's motion to dismiss the FMLA claim.

Marshall v. Westchester Med. Ctr. Health Network, 2024 WL 665200 (S.D.N.Y. Feb. 16, 2024)

Plaintiff requested leave under the FMLA two times: first in June 2021 and a second time in February 2022. Following her first request, defendant issued plaintiff a negative performance review in November 2021, placed her on a performance-improvement-plan in January 2022, and terminated her employment in March 2022. Plaintiff filed suit, alleging both retaliation and interference under the FMLA. Defendants moved to dismiss plaintiff's action. The court granted defendant's motion to dismiss as to the interference claim but denied its motion to dismiss the retaliation claim.

For her retaliation claim, the court found that negative performance reviews and/or performance management plans that limit earning potential can plausibly be "adverse actions." Likewise, because plaintiff requested leave under the FMLA in February 2022 only to be terminated one month later, the court found it plausible that plaintiff's request for leave could have motivated her termination. As a result, the court declined to dismiss the retaliation claim.

The court dismissed plaintiff's interference claim, however. Plaintiff alleges defendant interfered with her FMLA rights by terminating her less than one week before she was scheduled to take leave, but the court determined that plaintiff failed to allege any facts that her use of FMLA leave was a factor in the termination decision. The court instead found plaintiff's allegations lacking in light of defendant's argument that it would have terminated her regardless of the leave, due to poor performance. Plaintiff also alleged that her usage of FMLA leave in 2021 was a negative factor in defendant's decision to place her on a performance plan, but not that it was a negative factor to termination. Accordingly, the court found no plausible claim for relief and dismissed plaintiff's FMLA interference claim.

***Mattern v. PKF O'Connor Davies*, 2024 WL 3937751 (E.D.N.Y. Aug. 26, 2024)**

Plaintiff was an accountant and a partner at his former employer, an accounting firm. Plaintiff took FMLA leave due to serious depression. Defendant withheld plaintiff's pay starting when his leave began and lasting until a month after plaintiff returned. Additionally, when plaintiff returned from his leave in August 2021, defendant began criticizing plaintiff's billing practices,

and terminated him on September 30, 2021 due to his billing practices. Defendant did not terminate other employees with similar billing practices. Following plaintiff's termination, defendant did not compensate plaintiff for his equity units, defined retirement benefits, capital account, book of business, or last paycheck. Plaintiff brought suit in the Eastern District of New York against his former employer, as well as against two partners at the firm individually, for interference and retaliation in violation of the FMLA. Defendants moved to dismiss both claims.

The court did not dismiss plaintiff's interference claim under the FMLA. Plaintiff alleged that defendants interfered with his FMLA leave by threatening to withhold his pay and by calling him to work on client matters during his leave. To state an FMLA interference claim, a plaintiff must plausibly allege that, under the FMLA, he is an employee, defendant is an employer, plaintiff was entitled to FMLA leave, plaintiff gave notice to his employer of his intention to take such leave, and he was denied the benefits to which the FMLA entitled him. The court reasoned that while calling an employee during their leave does not necessarily constitute interference, it is sufficient for plaintiff's allegation of interference under the FMLA to survive a motion to dismiss.

Similarly, the court did not dismiss plaintiff's retaliation claim under the FMLA. Plaintiff alleged that he was terminated by defendant in retaliation for taking FMLA leave. To state a prima facie FMLA retaliation claim, a plaintiff must allege that he exercised rights protected under the FMLA, was qualified for his position, suffered an adverse employment action, and the adverse employment action occurred under circumstances giving rise to an inference of retaliatory intent. The court found that plaintiff satisfied each of these elements because he took FMLA leave, held his position for 17 years, and was terminated. The court explained that plaintiff satisfied "circumstances giving rise to an inference of retaliatory intent" because he was terminated two months after returning from FMLA leave and because defendant began withholding his pay during his FMLA leave.

Additionally, the court did not dismiss either claim with respect to the two partners plaintiff brought suit against individually, holding they satisfied the "economic reality test for individual liability" under the FMLA because they were both partners, both had power to fire him, and both participated in the decision to do so.

***Murray v. City of New York*, 2024 WL 3553266 (S.D.N.Y. July 26, 2024)**

Plaintiff brought suit under, *inter alia*, the FMLA's anti-interference and anti-retaliation provisions against her employer, the City of New York, on the grounds that defendant had denied her FMLA leave and forced her to use personal leave instead. Defendant moved to dismiss plaintiff's claims arguing that she had not adequately pleaded either her interference or retaliation claims. The court granted defendant's motion to dismiss.

On the interference, claim, the district court explained that "even when an employee can demonstrate interference with her FMLA rights, the Act provides no relief unless the employee has been prejudiced by the violation." Because plaintiff's complaint alleged only that her forced use of personal, rather than FMLA, leave *could* have caused her to experience potential consequences like discipline, negative performance evaluations, loss of attendance bonuses, or a reduced pension, rather than that she had *actually* suffered any adverse consequences, the court

held that she had not alleged that she was "prejudiced" by any FMLA violation and granted defendant's motion.

On the retaliation claim, the court explained that plaintiff had not adequately alleged an adverse employment action. Plaintiff had alleged that the denial of her FMLA leave—which forced her to use personal, rather than FMLA, leave—had been the adverse action. The court explained first that plaintiff was attempting to "elide[] the distinction between an interference and retaliation claim," and that the denial of her request, and any attendant consequences, could give rise only to an *interference* claim, not a retaliation claim. Independently of that, the court explained that, like the interference claim, the retaliation claim failed because it too did not allege any actual harm.

***Nunez-Renck v. Int'l Bus. Mach. Corp.*, 2024 WL 1495787 (N.D. Tex. Apr. 5, 2024**

Plaintiff sued defendant for interfering with her right to FMLA leave and for retaliation for engaging in protected conduct under the FMLA. The Texas district court had twice dismissed plaintiff's complaint without prejudice and with leave to amend. Defendant then filed a motion to dismiss plaintiff's second amended complaint for failure to state a claim. Plaintiff argued that defendant hindered her from taking further FMLA leave by sending her a calendar invite while she was on leave and requesting input and participation while on FMLA leave. Plaintiff also alleged that she did not take further leave after receiving the calendar invite because she believed defendant was upset that she was on leave, even though she could have taken more leave.

The Texas district court found that plaintiff's allegations did not meet all the elements for a prima facie FMLA interference claim. The court found that even though plaintiff alleged she was denied FMLA benefits by being discouraged from taking additional leave that she was entitled, she did not include any allegation that she notified defendant that she intended to take the additional leave. As to plaintiff's retaliation claim, the court found that plaintiff did not plead sufficient facts to demonstrate that she filed charges under the FMLA or testified in an FMLA proceeding and suffered an adverse action as a consequence of those activities. Because she did not plead sufficient facts to meet the required elements of each claim, the court granted defendant's motion to dismiss.

***Rexhaj v. Sweeping Corp. of Am.*, 728 F. Supp. 3d 687 (E.D. Mich. 2024)**

Plaintiff brought eighteen claims against defendant, including FMLA interference against defendant employer and plaintiff's supervisor, individually. Plaintiff alleged that he suffered harassment in the workplace, leading to depression and alcohol dependency. Plaintiff sought FMLA leave to seek treatment for both conditions and claims he was fired shortly after seeking leave. Defendants allege that they never fired plaintiff, nor did they deprive him of FMLA leave; rather, he simply stopped showing up to work.

The court denied defendants' motion for summary judgment, finding disputed material fact issues regarding whether plaintiff had provided sufficient notice of his intent to exercise his FMLA rights, whether the supervisor had the authority to fire plaintiff, whether plaintiff's employment was terminated, and whether the supervisor interfered with plaintiff's FMLA rights by failing to timely provide plaintiff with the FMLA paperwork.

***Richardson v. Hapag-Lloyd (Am.), LLC*, 2023 WL 9316875 (N.D. Ga. Nov. 29, 2023), report and recommendation adopted in part, rejected in part, 2024 WL 1377649 (N.D. Ga. Mar. 31, 2024)**

Plaintiff brought claims for FMLA interference and retaliation, as well as a Title VII claim against defendant. Plaintiff took 12 weeks of FMLA leave after the birth of her child and was terminated three-and-a-half months after returning from leave. Defendant asserted that plaintiff had performance shortcomings, which plaintiff's supervisor addressed several times before her leave. While on leave, HR texted with plaintiff about her anticipated return to work date, which plaintiff characterized as pressuring her to return to work early. While plaintiff was on leave, plaintiff's supervisor emailed plaintiff once to inquire about her return date, and a once called her to inform her of a pay raise and to tell her about another employee's termination. Plaintiff knew the other employee had also taken FMLA leave shortly before his termination, and she felt the call was an intimidation tactic. After plaintiff returned to work, her performance problems continued and she was insubordinate, leading to her termination.

Defendant moved for summary judgment of plaintiff's claims. The magistrate judge recommended granting summary judgment on plaintiff's interference claim, finding that plaintiff received her full 12-week leave entitlement, and the few emails and one phone call from HR and her supervisor did not interfere with that leave. The district judge agreed and adopted the magistrate judge's recommendations finding that, even if the emails and call might have "technically" interfered with plaintiff's FMLA leave, she suffered no prejudice, supported by the fact that she took all the leave she was entitled to.

The magistrate judge also recommended granting summary judgment on plaintiff's retaliation claim finding no causal connection between her FMLA leave and her termination, which occurred three months after her return The magistrate judge found this gap to be too long to support a causal connection, and none of plaintiff's other allegations of targeting or pressure to return from leave supported a causal connection. Likewise, the magistrate judge did not find any evidence to support pretext. But the district judge declined to adopt the magistrate's recommendation on this claim. Instead, the district judge found there was evidence to support a pretext finding, including evidence that plaintiff's performance was average, that defendant historically retained poor performers, and that plaintiff's supervisor began agitating for plaintiff's termination within weeks of her return from leave. Thus, the court denied summary judgment on plaintiff's retaliation claim.

***Ross-Tiggett v. Reed Smith LLP*, 2024 WL 1928176 (D.N.J. April 30, 2024)**

Plaintiff La Mecia Ross, a former paralegal, brought an assortment of claims against her former employer, Reed Smith. The lawsuit included an FMLA interference claim based on allegations that defendant denied plaintiff intermittent FMLA leave to care for her daughter who was ill. On summary judgment, the court found that defendant had granted plaintiff's requested leave, and the court dismissed the FMLA claim.

***Roush v. San Joaquin Valley College*, 2024 WL 3758034 (E.D. Cal. Aug. 12, 2024)**

Plaintiff was a former career services adviser of defendant college. Plaintiff was terminated while she was pregnant and just prior to her planned maternity leave under the FMLA. Plaintiff brought suit alleging FMLA interference and claiming that she was fired because she was about to take FMLA leave. Defendant moved for summary judgment. The court denied defendant's motion for summary judgment on the FMLA interference claim, concluding that plaintiff's pregnancy and anticipated leave were negative factors in defendant's decision to terminate her. In support of this finding, the court pointed to the fact that plaintiff's supervisor told her she would be responsible for defendant's career placement numbers while she was on maternity leave and that she could be fired if the numbers were not met, along with evidence that would allow a reasonable jury to find that her supervisor was irritated that plaintiff was pregnant and would be taking leave. The court also found the fact that she was terminated, at most, a few months before she was expected to take maternity leave to be a factor supporting the finding that her anticipated leave was a negative factor in plaintiff's termination.

***Small v. Classic Tulsa, C, LLC*, 2024 WL 117349 (N.D. Okla. Jan. 10. 2024)**

Plaintiff was employed as a finance director by defendant. Plaintiff was an otherwise good employee but for his excessive absenteeism. Some absences were linked to plaintiff's diverticulitis while many others arose from non-medical reasons, such as house repairs. A key problem was that plaintiff would often be absent without providing notice. Shortly after plaintiff had surgery for his diverticulitis, his mother was attacked by a dog and suffered injuries. Plaintiff thereafter inquired about FMLA leave but never took any formal action and was ultimately terminated.

Plaintiff filed suit for FMLA interference and retaliation. Based on plaintiff's repeated violation of the absence policy, the court held that a reasonable jury could find plaintiff would have been dismissed regardless of his request for FMLA leave, and granted summary judgment in favor of defendant on plaintiff's interference claim.

As for the retaliation claim, the court concluded that defendant's non-discriminatory reason for termination – absenteeism – was legitimate. Summary judgment was thus granted in favor of defendant on the retaliation count as well.

***Smith v. Newport Utilities*, 2024 WL 1660580 (E.D. Tenn. Apr. 17, 2024)**

Plaintiff worked as a bucket foreman for defendant, which required him to repair damaged powerlines and perform other forms of maintenance for electrical services. Plaintiff worked a two-week cycle, comprised of thirty-six hours on week one and forty hours on week two. This schedule often necessitated long shifts, extending beyond 24 hours at a time on some occasions.

Plaintiff began suffering incidents in which he would suddenly lose consciousness. Concern arose over plaintiff's ability to safely perform his duties, and he was ordered to see a doctor who would examine his fitness for work. Defendant also provided plaintiff with FMLA paperwork. In plaintiff's evaluation, the doctor determined he was unable to work extended hours and was restricted from operating vehicles that required a CDL. Plaintiff was granted extended FMLA leave. After nearly eight months, Plaintiff faced the same restrictions.

Defendant thus determined that there was no way to reasonably accommodate plaintiff and granted plaintiff the option to voluntarily retire which plaintiff accepted.

Plaintiff then brought an FMLA interference claim. The crux of the claim was whether defendant had interfered with plaintiff's FMLA rights via involuntary leave. Involuntary leave occurs when an employer forces an employee to take FMLA leave when the employee does not have a serious health condition that precludes them from working. The claim for interference then ripens if and when the employee seeks FMLA leave at a later date and such leave is not available. The undisputed evidence demonstrated that plaintiff never requested additional FMLA leave, and as such, defendant's motion for summary judgment was granted.

***Sparrow v. Washington Metro. Area Transit Auth.*, 2024 WL 3551962 (D.D.C. July 26, 2024)**

Plaintiff sued his employer, a municipal transit authority, for FMLA interference and retaliation related to his termination. The court denied defendant summary judgment on plaintiff's FMLA interference claim, concluding that a reasonable jury could find that irregularities on plaintiff's pay stubs caused plaintiff to return early from FMLA leave. The court also found that a reasonable jury could find that defendant did not interfere with plaintiff's FMLA rights because an employer's refusal to pay an employee on FMLA leave does not deny the employee FMLA benefits. However, the court concluded this was a question for the jury. While noting that the D.C. Circuit had not ruled on the matter, the court adopted the reasoning of the First, Seventh, and Tenth Circuits, which ruled that plaintiffs pursuing interference claims do not need to prove an employer's subjective intent in order to prevail.

The court granted defendant summary judgment on plaintiff's FMLA retaliation claim, finding that plaintiff had failed to present evidence that defendant's actions related to his paychecks were taken with intent to retaliate against him. The court also found that plaintiff's "vague assertions" related to being placed on leave without pay did not establish that defendant's reasons for placing him in this status (that plaintiff failed to request to use vacation and lacked any remaining emergency leave) were pretextual. The court also rejected plaintiff's argument based on temporal proximity because the alleged retaliatory actions occurred at least several months following his FMLA leave request and because plaintiff did not explain why the court should find that those actions were taken in retaliation for his FMLA leave request.

***Swanson v. City of Tuskegee, Alabama*, 2024 WL 4030671 (M.D. Ala. Sept. 3, 2024)**

Plaintiff, City Manager of Tuskegee Alabama brough suit for FMLA interference and retaliation. During a meeting with the City Council and Mayor discussing alleged performance deficiencies, plaintiff had a panic attack. Defendant claimed plaintiff resigned at that meeting and plaintiff claimed he did not resign. Immediately following the meeting, plaintiff met with defendant's human resources director who handled FMLA requests. Plaintiff allegedly told the human resources director he "needed help" and things were "not going well," and in response, the human resources director explained the FMLA leave process. The human resources director believed plaintiff made a verbal request for FMLA leave and informed plaintiff of his obligation to provide the proper paperwork. Leave was approved until the paperwork could be returned. Plaintiff did not work over the next several days and did not communicate with other City employees at that time. The Council and Mayor believed this was consistent with their

perception of plaintiff's expressed intent to resign. Defendant sent correspondence via mail and email to plaintiff about the verbal resignation but demonstrated willingness to work with plaintiff should he decide to continue employed and asked for confirmation in writing of plaintiff's intent. The city stated that if plaintiff did not respond in writing, the alleged verbal resignation would be considered plaintiff's official resignation notice. Plaintiff notified the city he was not resigning via email prior to the deadline provided in the City's correspondence. Despite this, the city posted the open City Manager position that same day. Plaintiff's medical provider issued FMLA certification in a timely manner.

Plaintiff claimed Defendant interfered with his request for FMLA leave and retaliated against him for requesting FMLA leave. The court denied defendant's motion for summary judgment. Defendant claimed it did not interfere with plaintiff's FMLA leave because he had resigned before he requested leave. The court found that defendant failed to demonstrate that they had accepted the resignation before plaintiff requested FMLA leave, and a reasonable jury could find plaintiff was entitled to FMLA leave, thus supporting plaintiff's claim of interference. Defendant further argued plaintiff did not have a qualifying condition, but the court found a reasonable jury could find plaintiff had a qualifying condition and provided notice to his employer accordingly. Finally, plaintiff's retaliation claim survived summary judgment because a reasonable jury could find the city had adequate notice of the request for leave when it decided to terminate him, and a reasonable jury could conclude the City's reasons for termination appeared pretextual.

***Tomlinson v. City of Portland*, 2024 UWL 279036 (D. Or. Jan. 25, 2024)**

Plaintiff brought suit against defendant alleging violation of the FMLA and Oregon's Family Leave Act (OFLA). Plaintiff alleged that defendant "interfered with her engaging in the protected activity of taking medical and family leave" in violation of the FMLA and "interfered, discriminated and retaliated against her" in violation of the OFLA. Plaintiff alleged that defendant only permitted her to work on one project without assistance shortly after she returned from her approved leave, and later terminated her employment less than two weeks after she sought additional FMLA/OFLA leave.

Defendant moved to dismiss plaintiff's complaint for failure to state a claim, arguing there were no factual allegations to demonstrate 1) plaintiff's eligibility for protections under the FMLA/OFLA, 2) plaintiff's qualifying medical condition, and 3) the casual connection between plaintiff taking the FMLA/OFLA leave and the adverse employment action. The district court denied defendant's motion.

The court noted that FMLA interference could be a "visited negative consequence" on an employee for taking approved leave, or termination of an employee to prevent use of leave. The court found plaintiff properly characterized her claim for interference under the FMLA based on her allegations that defendant "visited negative consequence" on her because she took FMLA leave and later terminated her when she asked for additional FMLA leave. The court noted that because OFLA expressly states that "visiting negative consequence" on an employee for taking or attempting to take OFLA leave is "retaliation" or "discrimination," the court would evaluate plaintiff's FMLA and OFLA claims together under the same standard.

Analyzing plaintiff's entitlement to take protected leave, the court ruled that plaintiff's allegation that she received healthcare provider certification is sufficient to show that she had a qualifying medical condition. Additionally, the court ruled that the fact that plaintiff took the leave is also sufficient to show she was eligible or qualified for protections of the FMLA and the OFLA.

On the casual connection between plaintiff taking the FMLA/OFLA leave and the adverse action, the court ruled that plaintiff's allegation of adverse actions are sufficient to survive a motion to dismiss claim under the FMLA and OFLA.

***Walker v. Se. Pa. Transp. Auth.*, 2024 WL 3069816 (E.D. Pa., June 20, 2024)**

Plaintiff brought suit alleging FMLA interference and retaliation, among other claims. Defendant filed a motion for summary judgment.

The court held that plaintiff produced no evidence to establish a *prima facie* case or to contradict defendant's legitimate, non-discriminatory reasons for terminating plaintiff — that plaintiff accumulated absences under a point system described in a collective bargaining agreement. Further, the court found that to invoke rights under the FMLA, employees must provide adequate notice to their employer about their need to take leave, and plaintiff failed to provide adequate notice and simply called in sick. The court therefore granted defendants' motion for summary judgment.

***Walls v. Miller Edge, Inc.*, 2024 WL 1836499 (E.D. Pa. Apr. 26, 2024)**

Plaintiff sued his employer and two supervisory employees, alleging interference, discrimination and retaliation for asserting his FMLA rights. Plaintiff alleged that after taking medical leave for a serious medical condition that required continuous medical treatment and hospitalization, his initial request for light duty accommodations prior to his return from FMLA leave was denied, and defendants fabricated performance allegations and dishonesty allegations against him after he returned from FMLA leave. Defendant moved to dismiss plaintiff's complaint for failure to state a claim. The court granted the motion in part and denied it in part.

As to plaintiffs' retaliation claim, the district court ruled that the timing of defendants' disciplinary actions against plaintiff after he returned from FMLA leave sufficiently alleges a causal connection because prior to his FMLA leave, he never experienced that pattern of hostility.

As one individual defendant's motion to dismiss the claims against him, the district court found that plaintiff did not sufficiently plead facts to show the individual defendant's supervisory authority over plaintiff.

The court also granted all defendants' motion to dismiss plaintiff's FMLA interference claim. The court noted that the statute of limitation for FMLA violations is two years unless it is a willful violation, which is three years. The court dismissed plaintiff's claim because nothing in plaintiff's pleadings alleged an interference with FMLA rights, except the request for "light duty," which occurred three years before the lawsuit was filed.

***Warren v. Millennium Hotels & Resorts*, 692 F.Supp.3d 828 (N.D. Ill. 2023)**

Plaintiff, a front office manager at a hotel, brought suit against defendant hotel chain in district court for the Northern District of Illinois, alleging defendant interfered with her FMLA rights by denying her requests for leave on two separate occasions and retaliated against her by forcing her to resign after she was eventually approved for FMLA leave. Defendant moved to dismiss, arguing that plaintiff had failed to state a claim for FMLA interference or retaliation.

The district court denied defendant's motion. As to the FMLA interference claim, defendant did not dispute that it was a covered employer or that plaintiff was an eligible, covered employee who was twice denied benefits despite providing adequate notice of her need for leave to settle a foster child and to care for the foster child's illness. Instead, defendant argued only that plaintiff failed to allege harm resulting from the violation because defendant eventually granted plaintiff's leave. The court disagreed, finding plaintiff's allegations that she lost time and the ability to settle a foster child and to care for her sick child were enough at the pleadings stage to support an inference that defendant's wrongful denial of leave prejudiced plaintiff. As to the FMLA retaliation claim, the court found that plaintiff's allegations of constructive discharge in relation to her Title VII retaliation claim satisfied the adverse action requirement of her FMLA retaliation claim, noting that plaintiffs are not required to know exactly what caused an adverse employment action prior to discovery.

***Wayland v. OSF Healthcare Sys.*, 94 F.4th 654 (7th Cir. 2024)**

Plaintiff, a manager at a healthcare organization sued her former employer for failing to adjust its performance expectation to reflect her reduced hours while she was on approved leave. The district court granted defendant's summary judgment motion and plaintiff appealed.

The Seventh Circuit vacated and remanded the district court's grant of summary judgment in favor of defendant on plaintiff's claims for FMLA interference and retaliation, holding that there was a genuine factual dispute over the amount of approved leave that plaintiff took. While plaintiff testified that she took continuous and intermittent leave for six weeks between October 2018 and April 2019, defendant's representative testified that she only took ten days of leave during that period. This dispute was material because plaintiff's testimony implied that she took leave for 20% of the full-time work period between October 2018 and April 2019 while defendant's testimony implied that she took leave for only 7% of that period. The court concluded that a jury could find that defendant engaged in interference or retaliation by failing to adjust plaintiff's performance standards despite her approved absence for 20% of the performance period, and firing her when she failed to meet the unadjusted standards.

Wayne v. Superior Air-Ground Ambulance Service, Inc., 2023 WL 6213579 (N.D. Ind. Sept. 22, 2023)

Plaintiff, a human resources manager, brought suit against her former employer and two former supervisors in district court for the Northern District of Indiana, alleging FMLA interference and retaliation. Plaintiff had applied for and obtained FMLA leave to care for her elderly parents and overlapping, intermittent FMLA leave for her own chronic health condition. Plaintiff alleged that, during these leaves, defendants excluded her from important job functions

and abruptly informed her that her role would be relocated to an office 90 miles away, and she could either accept this transfer or lose her job. Plaintiff quit shortly after. Plaintiff alleged that the distance of the transfer would prevent her from caring for her parents and seeking care from her own physicians, effectively eliminating her ability to use FMLA leave. Defendants moved to dismiss the interference claim for failure to state a claim and moved to dismiss the retaliation claim as to one of the supervisors for failure to allege sufficient facts supporting his individual liability.

The court denied the motion to dismiss on the interference claim as to the employer and the supervisor who announced plaintiff's transfer, holding that plaintiff had plausibly alleged an interference claim based on an "unlawful discouragement" theory. Citing the Seventh Circuit's position that an interference claim does not require an outright denial of FMLA benefits, the court reasoned that plaintiff had alleged enough facts to infer that the abrupt decision to relocate plaintiff's position was not designed to promote defendants' legitimate interests, but rather to discourage plaintiff from taking the FMLA leave she had already obtained, which was sufficient to plead interference. The court determined that the same facts—namely, presenting an unfair ultimatum that resulted in her constructive discharge—were sufficient to support an FMLA retaliation claim.

The court dismissed (without prejudice) the interference and retaliation claims as to the second defendant supervisor, finding that plaintiff failed to allege that the second defendant supervisor had authority or responsibility over the acts supporting her interference and retaliation claims, as is required to support individual liability.

***Wiberg v. Pixelle Specialty Solutions, LLC*, 2024 WL 1250423 (W.D. Wis. Mar. 22, 2024)**

Plaintiff, a 30-year engineering and operations management employee, filed suit against his former employer, Pixelle Specialty Solutions, LLC, asserting FMLA retaliation and interference claims. The district court denied defendant's motion for summary judgment, finding disputes of material fact precluded summary judgment on both FMLA claims.

To show retaliatory animus, plaintiff cited his receipt of a negative performance evaluation six months after his first FMLA leave, his placement on a performance improvement plan just two days after returning from his second FMLA leave, and his termination after a single alleged failure to complete a safety check as required by the plan. The court found that plaintiff's testimony that he had completed the safety check, which was also referenced in a text message, and that he was not given the usual amount of time to submit a related report created issues of material fact precluding summary judgment on plaintiff's retaliation claim.

The show interference, plaintiff argued that he was held accountable for safety checks not occurring while he was on FMLA leave. The court found that plaintiff's testimony created a material issue of fact as to whether defendant adjusted plaintiff's performance standards to account for plaintiff's leave, precluding summary judgment on plaintiff's FMLA interference claim.

***Woods v. City of St. Louis*, 2023 WL 8185072 (E.D. Mo. Nov. 27, 2023)**

A former employee sued her former employer for FMLA violations, including retaliation and interference/entitlement claims. A district court in Missouri granted defendant's motion for summary judgment as to plaintiff's claims of retaliation under the FMLA because plaintiff failed

to show that defendant's actions, stalling the paperwork related to her FMLA claim, were prejudicial to plaintiff's rights or caused her any adverse action, where defendant ultimately approved the leave plaintiff had requested and suffered no harm as a result.

The court found plaintiff made a triable case that she exercised her FMLA rights by requesting to take her FMLA leave and that her supervisor denied her request. Construing the facts in the light most favorable to plaintiff, the district court found that a rational jury could find in plaintiff's favor on a claim that the City interfered with her FMLA rights by denying her request to exercise her FMLA-approved leave.

Summarized elsewhere

***Brackett v. TSE Indus., Inc.*, 2023 WL 8806249 (M.D. Fla. Dec. 20, 2023)**

Crawford v. Bronx Comm. Coll., 2024 WL 3898361 (S.D.N.Y. Aug. 21, 2024)

***DeJesus v. Bon Secours Cmty. Hosp.*, 2024 WL 554271 (S.D.N.Y. Feb. 12, 2024), reconsideration denied, 2024 WL 1484253 (S.D.N.Y. Apr. 5, 2024)**

***Dolleh v. Sugarhouse HSP Gaming, L.P.*, 2024 WL 4351636 (E.D. Pa. Sept. 30, 2024)**

***Eastmond v. Galkin*, 2024 WL 404498 (E.D. Pa. Feb. 2, 2024)**

***Fluellen v. City of Philadelphia*, 2024 WL 1468331 (E.D. Pa. 2024)**

***Fogarty v. Newark Board of Education*, 2024 WL 1328131 (D.N.J. 2024)**

***Foster v. Credit One Bank, N.A.*, 2024 WL 4625291 (9th Cir. Oct. 30, 2024)**

***Gerard v. 1199 Nat'l Benefit Funds*, 2024 WL 4188469 (S.D.N.Y. Sept. 13, 2024)**

***Goines v. City of Ringgold*, 2024 WL 3816651 (N.D. Ga. July 11, 2024)**

***Gregg v. Northeastern Univ.*, 2024 WL 3625548 (D. Mass. Aug. 1, 2024)**

***Harris* v *Maryland Coalition of Families, Inc.*, 2024 WL 1721071 (D. Md. 2024)**

***Haynes v. DeLoach*, 2024 WL 4226785 (M.D. Fla. Sept. 18, 2024)**

***Johnson v. Town of Smithfield*, 2024 WL 1336466 (E.D.N.C. Mar. 28, 2024)**

***Kania v. CHSPSC, LLC*, 2024 WL 3165310 (S.D. W.Va. June 25, 2024)**

***Kelley v. Jewish Voice Ministries Int'l*, 2024 WL 4416978 (D. Ariz. Oct. 4, 2024)**

***Labrice v. City of Philadelphia*, 2024 WL 169657 (E.D. Pa. Jan. 16, 2024)**

***Leon v. Bensalem Twp. School Dist.*, 2024 WL 3744352 (E.D. Pa. Aug. 9, 2024)**

***Lussier v. City of Cape Coral*, 2024 WL 3673603 (M.D. Fla. Aug. 6, 2024)**

***Mitura v. Finco Servs., Inc.*, 712 F.Supp.3d 442 (S.D.N.Y. 2024)**

***Mook v. City of Martinsville*, 2024 WL 2988285 (W.D. Va. June 14, 2024)**

***Ngo v. DeJoy*, 2024 WL 358285 (W.D. Wash. Jan. 31, 2024)**

***Rolison v. Edgewood Co., Inc.*, 2024 WL 2847187 (E.D. Pa. June 4, 2024)**

***Sharkoski v. Visiting Nurse Ass'n of Greater Philadelphia*, 2024 WL 4111044 (E.D. Pa. Sept. 6, 2024)**

***Smyer v. Kroger Ltd. P'ship I*, 2024 WL 1007116 (6th Cir. Mar. 8, 2024)**

***Vandervoort v. N. Allegheny Sch. Dist.*, 2024 WL 4436858 (W.D. Pa. Oct. 7, 2024)**

***Webb v. Playmonster, LLC*, 2024 WL 1675062 (W.D. Wis. April 18, 2024)**

***White v. University of Washington*, 2024 WL 1241063 (W.D. Wash. Mar. 22, 2024)**

***Wood v. Kansas City S. Ry. Co.*, 2024 WL 4417376 (W.D. La. Oct. 3, 2024)**

B. Other Claims

Summarized elsewhere

***Taranto-King v. AdaptHealth, LLC*, 2023 WL 8452052 (M.D. Fla. Dec. 6, 2023)**

1. Discrimination Based on Opposition

***Robinson v. SEPTA*, 2024 WL 1936242 (E.D. Pa. May 1, 2024)**

Plaintiff Carol Robinson, Director of Control Center Bus Operations for SEPTA, sued her employer and two agents of her employer after she suffered various alleged adverse actions in retaliation for opposing discriminatory actions against an employee she supervised who had known disabilities and accommodations, and had taken FMLA leave. Defendants filed a motion to dismiss. The court found that because plaintiff herself had not taken FMLA leave, she could not bring an FMLA retaliation claim. Retaliation under the FMLA requires that plaintiff has invoked her right to FMLA-qualifying leave. Advocating for another employee's FMLA rights is not sufficient. The court therefore dismissed the FMLA retaliation claim.

2. Discrimination Based on Participation

***Carter v. T.D. Bank, N.A.*, 2024 WL 2828470 (2nd Cir. June 24, 2024)**

Five months before he was terminated from a position with defendant, plaintiff requested and was granted three weeks parental leave. In the intervening months, defendant investigated plaintiff for potential forgery and ultimately terminated him. Plaintiff sued, alleging, among other claims, FMLA retaliation related to his termination.

Defendant disputed plaintiff's claims and moved for summary judgment. The district court in Connecticut first held that FMLA retaliation claims are subject to the more lenient motivating factor causation standard. The court pointed out that other male employees were granted parental leave without incident, and no employee at defendant ever said anything negative about plaintiff's parental leave. Based on these facts, and the intervening forgery investigation, the court held that no reasonable factfinder could find that plaintiff's termination was motivated, even in part, by a desire to retaliate against him for scheduling his parental leave. The Second Circuit affirmed this decision.

***Nelson v. Ursa Major Corp.*, 2024 WL 249388 (E.D. Wis. Jan. 23, 2024); *aff'd*, *Nelson v. Ursa Major Corp.*, (7th Cir. Nov. 20, 2024)**

Plaintiff, a truck driver, filed a *pro se* complaint against defendant alleging that defendant denied or interfered with his FMLA benefits and retaliated against him for exercising his FMLA rights. Plaintiff claimed defendant did not make the required changes to his work schedule after he submitted the FMLA paperwork and instead required him to work more than 40 hours per week, and that defendant never informed him of his eligibility for FMLA leave or whether it approved his FMLA leave requests. Plaintiff also claims that he tried to enforce his FMLA rights by requesting a later start time to reduce his working hours, but that defendant interfered with his attempt by repeatedly calling him into work early and reprimanding him for "being late." Defendant filed a motion for summary judgment, arguing that plaintiff failed to establish that defendant denied or interfered with FMLA benefits to which he was entitled.

The Wisconsin district court held that defendant's uncontroverted facts defeat plaintiff's allegations. According to defendant, it provided plaintiff with 48 days of unpaid medical leave following his submission of FMLA paperwork and subsequent requests for time off and reduced plaintiff's hours to fewer than 40 per week in accordance with the restrictions set forth by his doctor in his FMLA paperwork. Finally, because the record shows that defendant did not deny or interfere with plaintiff's FMLA benefits, plaintiff's unsupported contentions regarding notice and reprimands from his supervisor are irrelevant.

For his retaliation claim, the court assumed that plaintiff engaged in statutorily protected activity and that defendant took adverse action against him. However, the court found that the record confirmed that plaintiff was terminated for disciplinary reasons unrelated to his claims and rejected plaintiff's retaliation claim.

Summarized elsewhere

***Carillo v. Wildlife Conserve Soc.*, 2024 WL 4225555 (E.D.N.Y. Sept. 18, 2024)**

***Daywalker v. UTMB at Galveston*, 2024 WL 94297 (5th Cir. Jan. 19, 2024)**

***Harris* v *August Eichhorn Center for Adolescent Care.* 2024 WL 2330126 (S.D.N.Y. May 20, 2024)**

***Labrice v. City of Philadelphia*, 2024 WL 169657 (E.D. Pa. Jan. 16, 2024)**

***Nash v. Advocate Aurora Health, Inc.*, 2023 WL 8718120 (N.D. Ill. Dec. 18, 2023)**

***Smith v. Magic Burgers LLC*, 2023 WL 9196714 (M.D. Fla. Nov. 16, 2023)**

***Warren v. Millennium Hotels & Resorts*, 692 F.Supp.3d 828 (N.D. Ill. 2023)**

***Wayne v. Superior Air-Ground Ambulance Service, Inc.*, 2023 WL 6213579 (N.D. Ind. Sept. 22, 2023)**

III. Analytical Frameworks

A. Substantive Rights Cases

***Gonzales v New Mexico Department of Health*, 2024 WL 869153 (D. N.M. Feb. 29, 2024)**

Plaintiff had knee surgery in January 2018. Following the surgical recovery, the employer approved plaintiff for intermittent FMLA for on-going medical appointments and occasional knee flare-ups.

In June 2020, plaintiff transferred to a new unit. Shortly after he arrived at the new unit, he met with the FMLA coordinator. He was deemed eligible for intermittent FMLA leave provided that he obtain a medical certification for any necessary intermittent leave. Plaintiff did not submit a medical certification until after he missed three mandatory overtime shifts in August and September of 2020. Notably, pursuant to policy, the employer can fire an employee after missing four mandatory overtime. Plaintiff obtained his medical certification limiting him to 48 hours of work per week on October 6, 2020. Plaintiff was given a suspension for the three missed overtime shifts and was thereafter approved to decline future overtime shifts when pain or when increased, or when he surpassed 48 hours of work per week.

On January 6, 2021, defendant assigned plaintiff mandatory overtime. Plaintiff refused to work the overtime, claiming that he had to drive his son to Albuquerque. He made no mention of any knee issues or exceeding the 48-hour weekly limit. Plaintiff was then terminated for his fourth missed mandatory overtime assignment.

Plaintiff first claimed his termination violated the FMLA because defendant engaged in interference under the FMLA. That claim was dismissed because plaintiff admitted he refused the mandatory overtime was because of driving his son to Albuquerque and therefore plaintiff failed to invoke any rights under the FMLA.

Next, plaintiff claimed that defendant failed to inform him that his FMLA request for July 2020 was deficient because he lacked medical certification until October 2020, when he was given a six-day suspension for missing three mandatory overtime shifts. The court found this claim failed because the undisputed facts demonstrated plaintiff did not suffer any monetary damages as a result of his refusal to work mandatory overtime shifts.

1. General

2. No Greater Rights Cases

***Harris* v *Maryland Coalition of Families, Inc.*, 2024 WL 1721071 (D. Md. 2024)**

Plaintiff was terminated on February 9, 2023, the same day she submitted an FMLA request. Despite the close temporal proximity, the court granted summary judgment to defendant because the employer presented unrebutted evidence that the termination decision occurred on January 11, 2023, during a conference call of company executives and that on January 18, 2023, defendant's Executive Director sent an email to the company's third-party human resources personnel about the termination. The decision to terminate clearly pre-dated the exercise of any protected FMLA rights.

Summarized elsewhere

***Chloe v. George Washington Univ.*, 2024 WL 2870891 (D.C. Cir. Jun. 6, 2024)**

B. Proscriptive Rights Cases

***Martin v. Penske Logistics*, 2024 WL 2853951 (N.D. Tex. June 4, 2024)**

Plaintiff was an employee of defendant transportation and distribution company. Plaintiff was in a car accident and had to miss work due to his injuries. He requested FMLA leave and was supposed to submit his medical certification. Plaintiff failed to complete the certification, and his request for leave was denied the following day. Plaintiff did not return to work. Plaintiff was then fired approximately three weeks later for violating defendant's attendance policy, which was a "no-fault" points-based policy, with one point given for each unapproved absence. The "no-fault" points-based policy subjected employees to termination if they accrued seven attendance points within a year, and plaintiff had reached over seven points. However, the same day plaintiff was fired, defendant partially reversed its decision on plaintiff's request for FMLA leave and retroactively granted plaintiff three days of FMLA leave. Plaintiff brought suit in the Northern District of Texas alleging interference and retaliation in violation of the FMLA due to employer terminating him based on attendance when some of his absences were protected by FMLA. Both parties moved for summary judgment on both claims.

The court denied both parties' motions for summary judgment as to plaintiff's interference claim. The court explained that a prima facie case of FMLA interference requires that plaintiff plead he was an eligible employee, his employer was subject to FMLA requirements, he was entitled to leave, he gave proper notice of his intention to take FMLA leave, his employer denied him the benefits to which he was entitled under the FMLA, and that the denial prejudiced plaintiff. Defendant argued that its termination of plaintiff was legitimate and non-discriminatory, based on its "no-fault" points-based attendance policy. However, the court stated that an interference claim which asserts the denial of an FMLA entitlement does not require that the employer acted discriminatorily. The court did not grant summary judgment for either party because a genuine dispute of material fact remained as to whether, after being retroactively granted three days of FMLA leave, plaintiff's absences still exceeded defendant's limit of seven.

With respect to plaintiff's retaliation claim, the court granted summary judgment for defendant. The court explained that a prima facie case of FMLA retaliation requires that plaintiff was protected under the FMLA, suffered an adverse employment action, and was treated less favorably than an employee who had not requested leave under the FMLA, or the adverse decision

was made because he sought protection under the FMLA. Unlike plaintiff's interference claim, plaintiff also needed to show retaliatory intent on the part of defendant. The court held that plaintiff could not prove retaliatory intent because even if defendant did miscount plaintiff's absences in using his absences to terminate him, that does not necessarily evidence that defendant's act of terminating plaintiff was retaliatory based on his FMLA leave.

IV. Application of Traditional Discrimination Framework

***James v. FedEx Freight, Inc.*, 2024 WL 3569984 (N.D. Ala. July 29, 2024)**

Plaintiff employee sued defendant employer under the FMLA claiming defendant fired him for leaving to care for his wife who was experiencing a high-risk pregnancy and for taking parental leave after the child was born. Defendant moved for summary judgment, claiming plaintiff was fired for insubordination. As a preliminary matter, the court cited plaintiff's failure to dispute defendant's factual assertions and thus assumed all facts asserted and supported by cited part of the record as true.

Defendant required plaintiff and similar employees to check in with a supervisor before clocking out. If there was more work to be done, reasonable overtime was expected. On multiple documented occasions, plaintiff failed to follow this rule and received coaching sessions. Plaintiff and his wife announced her pregnancy in May 2020 and, following the announcement, learned the pregnancy was high risk and plaintiff's wife would be required to stop working and driving. Plaintiff notified his supervisors of the risk and his wife's restrictions during the first week of June 2020. Plaintiff received additional coaching sessions, and, on July 2, 2020, his supervisors recommended he be terminated. Plaintiff was fired on July 30, 2020. Plaintiff's child was born on July 3, 2020. Plaintiff sought FMLA leave which was granted, though the parties differ on the exact dates of the FMLA leave.

Plaintiff filed claims of interference and retaliation under the FMLA. The court addressed the claims in terms of interference and retaliation before and after plaintiff's wife went into labor. Regarding the interference claim, the court determined there was no post-labor interference because plaintiff received and used paid parental leave. Regarding pre-labor interference, Plaintiff failed to point to any date of work where he was prevented from leaving to care for his wife. Similarly, regarding retaliation, because plaintiff's supervisor recommended his termination the day before plaintiff's wife gave birth and several days before plaintiff requested FMLA leave, a reasonable jury could not find that plaintiff's termination was a result of his requested leave rather than his repeated failure to follow company policies. Regarding pre-birth retaliation, the court found no reasonable juror could find that defendant disciplined plaintiff because of an anti-FMLA leave motive or intent, even though defendant was made aware of plaintiff's wife's condition and plaintiff's impending need for FMLA leave. Defendant's policies were applied uniformly to all similarly situated employees, providing evidence of defendant's nondiscriminatory reason for plaintiff's discipline and dismissal. The court granted defendant's motion for summary judgment on all claims.

***Smyer v. Kroger Ltd. P'ship I*, 2024 WL 1007116 (6th Cir. Mar. 8, 2024)**

Plaintiff was a manager at several of defendant's stores, who struggled to meet managerial expectations. Defendant transferred plaintiff to smaller stores twice in the hopes that plaintiff would cure his poor performance. Plaintiff was unable to improve his performance, and defendant terminated him.

Plaintiff filed suit alleging that defendant engaged in interference and retaliation under the FMLA, among other claims. The district court granted summary judgment in favor of defendant, which plaintiff appealed. The appellate court began the FMLA analysis by noting that absent direct evidence of either interference or retaliation, plaintiff had the burden of proving either theory under the *McDonnell Douglas* framework. Under this framework, plaintiff carried the burden of establishing a *prima facie* case under either theory, which would shift the burden to defendant to show a legitimate non-discriminatory reason for termination, if that burden was satisfied the burden would shift back to plaintiff to rebut the reason as pretextual.

The crux of the issue was whether the supervisors involved in plaintiff's firing knew or were on notice that plaintiff had asserted any FMLA rights. The court determined that the record did not establish that any of the decisionmakers had notice of plaintiff asserting FMLA rights. Plaintiff only ever mentioned family obligations. At no point did plaintiff inform those responsible for his termination about his use of or need for FMLA leave. Thus, the court affirmed summary judgment for defendant.

***Westbrook v. Chattanooga Hamilton County Hosp. Auth.*, 2024 WL 4029317 (E.D. Tenn. Sept. 3, 2024)**

Plaintiff was a surgical technologist for defendant hospital. Plaintiff claimed that defendant transferred her from a more lucrative position in retaliation for using intermittent FMLA leave. Defendant moved for summary judgment, arguing that plaintiff could not establish a causal connection between her use of FMLA leave and the transfer. After reviewing the elements of a retaliation claim, the court granted defendant's motion for two reasons. First, plaintiff could not establish a causal connection between her use of FMLA leave and transfer. Second, plaintiff could not establish that the decision-maker knew that plaintiff had engaged in protected activity. Plaintiff's causation theory rested solely on temporal proximity. While the Sixth Circuit has held that temporal proximity alone can establish causation when an employer acts swiftly and immediately upon learning of an employee's protected activity, plaintiff's measurement of when she engaged in protected activity was wrong. Plaintiff argued that her most recent use of intermittent FMLA leave was the starting point for measuring temporal proximity. The court, however, found that a new period of intermittent FMLA leave does not reset the temporal proximity clock. Thus, defendant knew about plaintiff's exercise of FMLA rights eight months—not ten days—earlier, which was too remote for temporal proximity alone to prove causation. The court also found that plaintiff had no evidence that the manager who transferred plaintiff knew that plaintiff was using FMLA leave. The court thus granted summary judgment.

Summarized elsewhere

***Carter v. T.D. Bank, N.A.*, 2024 WL 2828470 (2nd Cir. June 24, 2024)**

***Shipton v. Baltimore Gas & Elec. Co.*, 109 F.4th 701 (4th Cir. 2024), cert. denied, 2024 WL 5011737 (U.S. Dec. 9, 2024)**

A. Direct Evidence

Summarized elsewhere

***Donithan v. Ohio Dep't of Rehab. & Correction*, 2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

***Kehoe v. Bd. of Trustees of Univ. of Illinois*, 2024 WL 308326 (N.D. Ill. Jan. 26, 2024)**

B. Application of McDonnell Douglas to FMLA Claims

***Beard v. Hickman Cnty. Gov't.*, 2023 WL 878935 (M.D. Tenn. Dec. 19, 2023)**

Plaintiff was employed by defendant from 2011 through 2021 within the Hickman County Sheriff Department. He began taking FMLA leave in 2018 due to complications with diabetes. After having his leg amputated in May 2021, plaintiff requested short-term disability and FMLA leave. Defendant's "Command Staff" terminated plaintiff's employment in June 2021. Plaintiff sued defendant in June 2022, bringing FMLA interference and retaliation claims alongside other discrimination claims.

Defendant moved for summary judgment on the FMLA retaliation claim on the grounds that plaintiff failed to establish that the non-discriminatory reason for his termination was pretextual. The court denied this motion. The court applied the *McDonnell Douglas* tripartite burden shifting framework and reasoned that before a court analyzes whether plaintiff needs to show the non-discriminatory reason for their termination was pretextual, defendant has the burden to "clearly set forth, through the introduction of admissible evidence, the reasons for the [adverse action]." Defendant argued it satisfied this burden by showing that it fired plaintiff because he was no longer able to work. The court decided that defendant failed to produce any evidence that clearly sets forth this claimed reason, since "an articulation not admitted into evidence will not suffice." *Id.* at n.9. Since defendant failed to meet their burden of production, the court decided they did not need to reach the question of whether plaintiff established that the non-discriminatory reason for his termination was pretextual.

***Benitez v. Valentino U.S.A., Inc.*, 2024 WL 1347725 (S.D.N.Y. Mar. 29, 2024)**

Plaintiff, who worked for defendant as the Senior Payroll and Benefits Administrator, alleged that she was unlawfully terminated by defendant in retaliation for requesting FMLA leave. Plaintiff suffered from severe depression and anxiety and after taking twelve months of leave, her doctor advised that she was not ready to return to work and advised she take two additional months of leave. Plaintiff's request was denied, and she was terminated from her role.

The court granted summary judgment in favor of defendant because, although plaintiff experienced an adverse employment action while on FMLA leave, she failed to demonstrate that she was qualified for her position upon the leave's expiration. Because, according to plaintiff, she was unable to return to work at the expiration of her FMLA leave without taking additional leave to address her serious health condition, she was not qualified for her position as a matter of law.

***Brackett v. TSE Indus., Inc.*, 2023 WL 8806249 (M.D. Fla. Dec. 20, 2023)**

Plaintiff, a machinist, filed suit against defendant alleging interference with and retaliation under the FMLA. Plaintiff claims that due to his FMLA leave approval, defendant compelled him to execute the duties of a Class A Machinist at the reduced rate of pay and reduced job grade of a Class B Machinist. The court denied defendant's motion to dismiss in part. Applying the McDonnell Douglas burden shifting framework, the court determined that plaintiff sufficiently established a prima facie case of retaliation. First, the court found that plaintiff's request for FMLA certification and unspecified future leave qualifies as a protected activity under the FMLA. Second, the court held that constructive discharge qualifies as an adverse employment action under the FMLA. Third, the court found that there was a causal connection because defendant was aware of the protected conduct at the time of the adverse action. However, the court granted defendant's motion to dismiss the FMLA interference claim. The court found that an employer cannot deny or interfere with an FMLA benefit that the employee did not pursue or utilize.

***Duncan v. North Broward Hosp. Dist.*, 2024 WL 962357 (S.D. Fla. 2024)**

Plaintiff, a real estate manager for defendant, requested and was granted 12 weeks of FMLA leave. When she was unable to return to work, she requested and was granted an additional leave under the ADA. When she was unable to return to work at that time, she was terminated. Plaintiff brought multiple claims against defendant, including for retaliation under the FMLA. Defendant moved for summary judgment.

The district court in the Southern District of Florida held that plaintiff made a prima facie case of FMLA retaliation, including that the temporal proximity of plaintiff's termination approximately one month after her FMLA leave established a causal connection. However, the court held that plaintiff failed to establish a genuine dispute of material fact as to whether retaliation was the real reason for her termination, where the record evidenced that defendant terminated plaintiff due to her inability to return to work. Under the *McDonnell Douglas* framework, plaintiff cannot succeed by merely disputing the wisdom of the employer's reason, but instead must present significant probative evidence to establish pretext and avoid summary judgment. The court granted summary judgment in favor of defendant.

***Farmer v. FilmTec Corp.*, 2024 WL 4239552 (D. Minn. Sept. 19, 2024)**

Following his termination, plaintiff sued his former employer, a water separation and purification company, where he had worked as a "Senior Manufacturing Operator." Plaintiff, who was a type 1 diabetic and suffered from back pain, pleaded, among others, claims under the FMLA for interference and retaliation. Defendant moved for summary judgment on all counts, arguing with respect to the FMLA claims that there was no evidence the employer denied plaintiff any FMLA benefits or interfered in any way with his return to work and that there was no evidence of any retaliatory motive.

The Minnesota district court agreed with defendant, finding no factual dispute that plaintiff received paid FMLA leave for many weeks and that defendant had tried to facilitate plaintiff's return to work, efforts that were stymied by plaintiff's physician not returning records, by plaintiff's failure to complete a necessary evaluation, and by plaintiff losing his phone. Similarly,

with respect to the FMLA retaliation claim, the court found no record evidence linking defendant's discipline or termination to his request for FMLA leave The timing of events alone could not support an inference of retaliatory motive, "given the evidence in the record undermining any such inference," the court reasoned, going on to emphasize that the uncontroverted evidence established that plaintiff would have been reinstated had he not engaged in misconduct during the return-to-work meeting. The opinion is currently under appeal after the district court denied reconsideration on November 19, 2024.

***Kania v. CHSPSC, LLC*, 2024 WL 3165310 (S.D. W.Va. June 25, 2024)**

Plaintiff employee and defendant employer both moved for summary judgment on plaintiff's retaliation and interference claims under the FMLA. Plaintiff's employment was terminated following several absences in the fall of 2022 related to plaintiff's pneumonia diagnosis. After missing four days of work due to shortness of breath and fatigue, plaintiff returned to work but continued to experience symptoms. She went to a doctor and was diagnosed with pneumonia. Plaintiff texted her supervisor to inform him of the diagnosis and that she would be absent from work. The supervisor responded to plaintiff's text message by "liking" it. Plaintiff returned to work one week after her diagnosis and worked two days but then called out the next two consecutive days due to ongoing symptoms of pneumonia. Plaintiff's doctor's note excused her through the date of her last absence. Upon returning to work, Plaintiff was fired.

The court applied the burden shifting framework of *McDonnell Douglas* to plaintiff's retaliation claim. The Wester Virginia district court determined that although plaintiff established a prima facie case for FMLA retaliation based on the temporal proximity between the protected activity of her leave and her termination, defendants demonstrated a legitimate non-retaliatory reason for terminating plaintiff's employment by providing evidence of ongoing attendance issues including a final warning prior to her FMLA leave. In response, plaintiff provided evidence via the deposition testimonies of her supervisor and defendant's HR Director indicating her employment would have been terminated in response to the pneumonia-related absences even if she did not have a history of tardiness and attendance issues. The court determined this was sufficient evidence to create a genuine dispute of material fact and denied both parties' motions for summary judgment.

The interference claim presented two issues: whether (1) plaintiff provided sufficient notice of her qualifying condition to qualify for FMLA leave, and (2) plaintiff was denied FMLA benefits. Defendants argued plaintiff's claim for interference failed because she did not invoke protections of the FMLA or expressly request FMLA leave, and in the alternative, plaintiff could not demonstrate that the decision to terminate her employment occurred after she exercised her FMLA rights. The court agreed with plaintiff that notice of her pneumonia is a qualifying condition under the FMLA because it resulted in a period of incapacity for longer than three consecutive days requiring continuing treatment, and she was supervised by her doctor. Further, the court determined plaintiff's notice of her qualifying condition was sufficient to trigger defendant's obligations under the FMLA. However, because the factual question remained whether plaintiff's termination would have occurred regardless of her taking FMLA leave, the court denied both motions for summary judgment on the interference claim.

***Richards v. Cmty. Choice Credit Union*, 2024 WL 4361960 (E.D. Mich. Sept. 30, 2024)**

Plaintiff sued her former employer alleging that she was terminated because she applied for FMLA leave. The district court denied employer's motion for summary judgment, finding a genuine issue of material fact regarding whether employer's stated reason for the termination was pretextual.

Plaintiff argued that she was terminated after she took intermittent FMLA leave, but defendant asserted it terminated plaintiff after plaintiff violated company policy by sending company documents to her personal email address. Applying the *McDonald-Douglass* burden-shifting analysis, the district court found that Plaintiff met the minimal burden of establishing a *prima facie* case because she showed that she was placed on a performance improvement plan and eventually terminated after applying for intermittent FMLA leave. The court also found plaintiff's offer of her employer's text message stating that plaintiff needed to be on FMLA permanently or fired was sufficient evidence of a causal connection between the retaliatory action and the protected activity.

To establish a non-discriminatory reason for plaintiff's termination under *McDonald-Douglass*, defendant asserted that it terminated plaintiff after she violated company policy. But plaintiff offered evidence to show that she violated company policy only after being instructed by her supervisor to do so. So, the court denied defendant's summary judgment motion, finding a fact issue as to whether defendant terminated plaintiff for a non-discriminatory reason.

***Richards v. Cmty. Choice Credit Union*, 2024 WL 4361960 (E.D. Mich. Sept. 30, 2024)**

Plaintiff sued her former employer alleging that she was fired because she applied for FMLA leave. The district court denied employer's motion for summary judgment, finding a genuine issue of material fact regarding whether its stated reason for the termination was pretextual. Plaintiff argued that she was fired after she took intermittent FMLA leave, but defendant asserted plaintiff was fired for violating company policy by sending company documents to her personal email address. Applying the *McDonnell-Douglas* burden-shifting analysis, the district court found that plaintiff met the minimal burden of establishing a prima facie case because she showed that she was placed on a performance improvement plan and eventually fired after applying for intermittent FMLA leave. The court also found plaintiff's offer of her employer's text message stating that plaintiff needed to be on FMLA permanently or fired was sufficient evidence of a causal connection between the adverse action and the protected activity. To establish a non-discriminatory reason for plaintiff's termination under *McDonnell-Douglas*, defendant asserted that it fired plaintiff after she violated company policy. But plaintiff offered evidence to show that she violated company policy only after being instructed by her supervisor to do so. So, the court denied defendant's summary judgment motion, finding a fact issue existed as to whether defendant fired plaintiff for a non-discriminatory reason.

***Sharkoski v. Visiting Nurse Ass'n of Greater Philadelphia*, 2024 WL 4111044 (E.D. Pa. Sept. 6, 2024)**

Plaintiff brought claims for FMLA interference and retaliation against his former employer. Defendant was acquired by another entity and planned to eliminate plaintiff's position

due to duplication, which plaintiff knew in December 2021. Two other officers were attempting to convince the new leadership to create another position for plaintiff. In early March 2022, plaintiff informally told the two officers he planned to take FMLA leave and submitted his formal request on March 23. Plaintiff later learned that on March 4, defendant made the decision to eliminate his position, but defendant did not notify him of his termination until June 17, when his FMLA leave was ending. Defendant said the decision was due to financial concerns, although one officer testified that plaintiff's performance was also a factor in the decision. The temporal proximity of plaintiff's request for FMLA and the termination decision, as well as inconsistent reasons given for the termination decision, created a triable issue of fact and summary judgment on plaintiffs' FMLA retaliation claim was denied.

Plaintiff's alleged interference claim, which was based on the same nucleus of facts as his retaliation claim, was permitted to proceed to trial, however, the court cautioned whether an interference claim could stand on the same facts as a retaliation claim, and nothing more.

***Uttarwar v. Lazard Asset Mgmt. LLC*, 2024 WL 1251177 (S.D.N.Y. Mar. 22, 2024)**

Plaintiff brought suit against defendant for retaliation under the FMLA. Plaintiff argued that defendant retaliated against him for going on FMLA leave by terminating his employment. Defendant moved for summary judgment, arguing that plaintiff was terminated for a legitimate and non-discriminatory reason.

The court granted defendant's summary judgment motion. The court found there was no causal connection between plaintiff's FMLA leave and his termination because plaintiff was part of a group of 50 employees defendant terminated because of negative performance evaluations. Additionally, the court noted that even though plaintiff was terminated shortly after requesting parental leave, the timing alone is insufficient to show a pretext, and plaintiff provided no additional information or evidence to suggest that defendant retaliated against him for taking FMLA leave.

Summarized elsewhere

***Bartol v. City of Chattanooga*, 2024 WL 1740337 (E.D. Tenn. Mar. 18, 2024)**

***Crowelle v. Cumberland-Dauphin-Harrisburg Transit Auth.*, 2024 WL 4468492 (M.D. Pa. Oct. 10, 2024)**

***Donithan v. Ohio Dep't of Rehab. & Correction*, 2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

***Eastmond v. City of Philadelphia*, 2024 WL 3761734 (E.D. Pa. Aug. 12, 2024)**

***Fenton v. Dollar Tree Stores, Inc.*, 2024 WL 4372310 (M.D. Pa. Oct. 2, 2024)**

***Foster v. Credit One Bank, N.A.*, 2024 WL 4625291 (9th Cir. Oct. 30, 2024)**

***Irvin v. Versatrim, LLC*, 737 F.Supp.3d 297 (E.D.N.C. 2024)**

***Jean v. Wal-Mart Assocs., Inc.*, 2024 WL 3949407 (S.D. Fla. Aug. 27, 2024)**

***Marrero v. Amazon.com Servs. LLC*, 2024 WL 216280 (S.D. Fla. Jan. 19, 2024)**

***Swanson v. City of Tuskegee, Alabama*, 2024 WL 4030671 (M.D. Ala. Sept. 3, 2024)**

***Tanner v. Stryker Corp. of Michigan*, 104 F.4th 1278 (11th Cir. 2024)**

1. Prima Facie Case

***Espina v. City of San Antonio*, 2024 WL 1335657 (W.D. Tex. 2024)**

After plaintiff, who worked for defendant city's IT department, was terminated she filed suit against defendant alleging, among other claims, discrimination and retaliation under the FMLA. Defendant filed a motion for summary judgment.

The district court in the Western District of Texas granted defendant's motion. The court held that plaintiff presented no evidence that she was entitled to FMLA benefits and therefore could not establish a prima facie case. Plaintiff admittedly did not know whether she had any available FMLA leave at the time of her request. Without showing that she was eligible for FMLA leave, plaintiff could not show a FMLA violation. The court further held that even if plaintiff could establish a prima facie case, defendant stated a legitimate non-discriminatory and non-retaliatory reason for its employment decisions and plaintiff presented no evidence to show pretext or argument of mixed-motives case.

***Gregg v. Northeastern Univ.*, 2024 WL 3625548 (D. Mass. Aug. 1, 2024)**

Plaintiff, a private university employee, alleges that she was "constructively discharged," "forced to leave her employment," and left with no choice but to apply elsewhere for employment because of how defendants treated her in retaliation for using her FMLA intermittent leave and for exercising her FMLA rights. Throughout her employment at the university, plaintiff and her supervisor clashed over her job performance, attendance, and dependability. Plaintiff brought suit, alleging interference and retaliation under the FMLA along with other state law claims. Defendants removed to federal court and moved for summary judgment.

The Massachusetts district court granted defendant's motion, holding that (1) defendants did not willfully violate the FMLA, so a two year rather than three year statute of limitation applied; (2) the denial of plaintiff's request for FMLA leave did not constitute FMLA interference; (3) plaintiff's supervisor did not discourage or repeatedly chill plaintiff's use of FMLA leave; (4) defendant's leave management specialist did not discourage plaintiff's use of FMLA leave or otherwise make the process onerous for her; (5) plaintiff's resignation from her position did not constitute an "adverse employment action"; and (6) an e-mail from plaintiff's supervisor setting out her expectations for job performance did not constitute an "adverse employment action." Plaintiff has appealed the district court's decision to the First Circuit court of appeals.

***Neal v. Florida HMA Reg'l Servs.*, 2024 WL 2784884 (M.D. Fla. May 30, 2024)**

Plaintiff, an accounts receivable collections specialist with defendant employer, filed a *pro se* complaint alleging that defendant retaliated against her for exercising her FMLA rights; plaintiff was ultimately terminated by defendant. Defendant filed a motion for summary judgment alleging

that plaintiff's claim was time-barred and that plaintiff did not suffer any adverse action for taking FMLA leave. The Florida district court held that even if neither of those arguments was meritorious, the court would still grant summary judgment for defendant because plaintiff failed to rebut defendant's legitimate, non-retaliatory reasons for taking the action it did. The court explained that negative performance reviews, poor communication, and low productivity are all legitimate, non-retaliatory reasons for discharge in the context of an FMLA retaliation claim. Plaintiff cannot point to any evidence that defendant's proffered reason was pretextual or that plaintiff's FMLA-protected activity was the real reason for her discharge. Regarding defendant's argument that plaintiff did not suffer any adverse action for taking FMLA leave, the district court agreed, noting that because plaintiff testified in her deposition that she was written-up in retaliation for refusing her supervisor's sexual advances, plaintiff cannot point to any evidence showing that taking FMLA leave was a "but for" cause of her write-ups.

***Rylatt v. City and County of Denver, Dept. of Fin.*, 2024 WL 3966688 (D. Colo. Aug. 28, 2024)**

Plaintiff brought suit against her employer alleging retaliation in violation of the FMLA. Defendant moved to dismiss for failure to plead sufficient factual allegations to support a claim for relief. The court granted defendant's motion to dismiss the FMLA retaliation claim, finding that plaintiff did not include enough detail in her complaint for a claim of retaliation to be plausible. In dispute was whether defendant had taken a materially adverse action and whether there was any causal connection between defendant's action and plaintiff's FMLA leave. The court found that the factual allegations were not sufficient to plausibly suggest that a "coaching memorandum" was a materially adverse employment action.

The court further found that defendant's alleged threat of future termination after plaintiff requested to work in another department after returning from FMLA leave if a position in another department could not be found for plaintiff within 90 days constituted a materially adverse employment action, but plaintiff failed to sufficiently allege facts that support a causal connection between plaintiff's FMLA leave and defendant's threat of future termination. The court observed that plaintiff failed to allege any facts that show ill intent on the part of defendant or that the threat of future termination was tied to plaintiff taking leave under the FMLA.

***Sumler v. LeSaint/Tagg Logistics*, 2024 WL 2106176 (W.D. Tenn. May 10, 2024)**

Pro se plaintiff brought claims against her former employer for violations of, *inter alia*, the FMLA. The district court referred plaintiff's claims to a magistrate judge for evaluation under Fed. R. Civ. Pro. 12(b)(6), and a district court review the magistrate's recommendation. Plaintiff alleged that she requested FMLA leave from her human resources manager, and, just three days later, was given a negative evaluation and was denied her yearly raise and bonus. The magistrate judge found that, with these allegations, plaintiff had sufficiently pled each of the required elements for a *prima facie* claim under the retaliation or discrimination theory for recovery under the FMLA recognized by the Sixth Circuit. The district court found no clear error in the magistrate judge's Report and Recommendation and adopted the decision in full.

Summarized elsewhere

***Boan v. Florida Dept. of Corr.*, 2024 WL 3084388 (11th Cir. June 21, 2024)**

***Connally v. U.S. Dep't of Veterans Affs.*, 2024 WL 1335183 (E.D. Mich. Mar. 28, 2024)**

***Cooper v. Cnty. of York o/a York Cnty. Prison*, 2024 WL 183013 (M.D. Pa. Jan. 17, 2024)**

***DeFranco v. New York Power Auth.*, 731 F.Supp.3d 479 (W.D.N.Y. 2024)**

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

***Farmer v. FilmTec Corp.*, 2024 WL 4239552 (D. Minn. Sept. 19, 2024)**

***Fenton v. Dollar Tree Stores, Inc.*, 2024 WL 4372310 (M.D. Pa. Oct. 2, 2024)**

***Labrice v. City of Philadelphia*, 2024 WL 169657 (E.D. Pa. Jan. 16, 2024)**

***Martin v. Penske Logistics*, 2024 WL 2853951 (N.D. Tex. June 4, 2024)**

***Mays v. Newly Weds Foods, Inc.*, 2024 WL 1181461 (N.D. Miss. Mar. 19, 2024)**

***McBeath v. City of Indianapolis*, 2024 WL 1885849 (S.D. Ind. Apr. 29, 2024)**

***McLaurin v. Georgia Dep't of Nat. Res.*, 739 F.Supp.3d 1254 (N.D. Ga. 2024)**

***Morris v. Plymouth Court SNF*, 2024 WL 1348350 (E.D. Mich. 2024)**

***Murray v. City of New York*, 2024 WL 3553266 (S.D.N.Y. July 26, 2024)**

***Nunez-Renck v. Int'l Bus. Mach. Corp.*, 2024 WL 1495787 (N.D. Tex. Apr. 5, 2024)**

***Shedden v. Port Auth. of New York & New Jersey*, 2024 WL 278568 (D.N.J. Jan. 25, 2024)**

***Steidle v. United States Liability Insurance Co., Inc.*, 2024 WL 4374110 (E.D. Pa. Aug. 26, 2024)**

a. Exercise of Protected Right

***Fogarty v. Newark Board of Education*, 2024 WL 1328131 (D.N.J. 2024)**

Plaintiff alleged defendant unlawfully discriminated against her because of her pregnancy and subsequent maternity leave. The case included claims under the FMLA for interference and retaliation, in addition to state law claims. Defendant moved for partial summary judgment.

The court granted summary judgment on the FMLA claims. Because plaintiff was unable and did not return to work after 12 weeks of FMLA leave, there was no interference claim when requesting an extension of maternity leave. The court also held that plaintiff's retaliation claim failed for the same reason. Plaintiff could not show that there was retaliation for invoking a protected right because she had exhausted available FMLA leave.

***Maier v. UPS*, 721 F. Supp. 3d 693 (N.D. Ill. 2024)**

Plaintiff was a longtime employee in her role for defendant. Plaintiff began reporting to a new supervisor who declined to advance plaintiff for a promotion when one arose in January 2019. In May 2019, plaintiff's job was transferred to a different work location within the company, which resulted in plaintiff (who was then seven-months pregnant) tripling her commute time and having to work in a trailer without running water or bathrooms. Plaintiff had previously communicated, when interviewing for the promotion for which she was ultimately passed over, that she intended only to take six weeks of leave under the FMLA when she gave birth to help prepare for "peak" season. But because she did not receive the promotion, plaintiff took her entire entitlement of twelve weeks of leave under the FMLA. Plaintiff returned from her FMLA leave, and again was denied a promotion in early 2020. Plaintiff filed suit, alleging retaliation for using leave under the FMLA and sex and pregnancy discrimination.

Defendant moved for summary judgment on plaintiff's FMLA retaliation claim. Plaintiff alleged both her transfer in May 2019 and the failure to promote her in early 2020 constituted adverse actions for which she was retaliated because of her use of leave under the FMLA. Addressing each in turn, the Illinois district court determined the May 2019 transfer could not have been an adverse action because there was no evidence that plaintiff had requested or took FMLA leave before she was transferred. Consequently, she had not engaged in protected activity that could be attributed as the source of the adverse action.

However, the court found genuinely disputed material facts on whether defendant's refusal to promote plaintiff in early 2020 was retaliation under the FMLA. By this time, plaintiff had requested and taken her entitlement to leave under the FMLA. Recognizing that failure to promote is no doubt an adverse action, because there were disputed material facts as to whether defendant truthfully explained the 2020 promotion process, and because of the close timing between plaintiff's use of FMLA leave and the promotion decision, the court denied summary judgment.

***Minnitti v. Crystal Window & Door Systems*, 702 F.Supp.3d 261 (M.D. Pa. 2023)**

Plaintiff was terminated by defendant after the plant he managed remained unprofitable. At or around his termination, plaintiff failed to carry out defendant's order for him to fire two African American employees that were taking a medical leave of absence. Plaintiff sued alleging that defendant retaliated against plaintiff for allowing the two employees to exercise their rights under the FMLA. The Pennsylvania district court granted summary judgment against plaintiff on grounds that, while the employees were on leave for medical reasons, they never invoked the protections of the FMLA when doing so. Because they did not, plaintiff could not establish a prima facie case of FMLA retaliation.

***Truitt v. PNK Vicksburg, LLC*, 2024 WL 4045475 (S.D. Miss. Sept. 4, 2024)**

Plaintiff notified defendant of the need for FMLA leave, which was provisionally granted pending a supporting medical certification. Before leave was to commence, defendant terminated plaintiff's and two other employees' employment after an investigation revealed that the employees pocketed tips rather than pooling them, in violation of defendant's tip pool policy. Plaintiff sued, alleging FMLA retaliation among other claims.

Defendant filed a motion to dismiss plaintiff's FMLA retaliation claim arguing that that the amended complaint failed to give it fair notice of its supposed retaliatory acts because plaintiff simply reiterated the facts from his sex discrimination claim to purportedly claim damages for "[d]efendant'

retaliatory acts." Defendant further argued that plaintiff did not engage in protected activity by merely "seeking" FMLA leave, as opposed to actually taking FMLA leave. Plaintiff argued that he sufficiently stated a claim for FMLA retaliation by alleging he sought leave and was subsequently terminated in retaliation for seeking leave.

The court denied defendant's motion. First, the court found that plaintiff engaged in protected activity by seeking leave. Second, plaintiff had plausibly pleaded a causal connection between his request for FMLA and his termination based on the complaint's allegation that plaintiff was terminated less than two months after notifying defendant of the need for leave.

Summarized elsewhere

***Haran v. Orange Bus. Servs., Inc.*, 2024 WL 3567150 (S.D.N.Y. July 29, 2024), appeal filed No. 24-2312 (2d Cir. Sept. 4, 2024)**

***Marshall v. City of Helena-West Helena*, 2024 WL 3260062 (E.D. Ark. July 1, 2024)**

***Wayland v. OSF Healthcare Sys.*, 94 F.4th 654 (7th Cir. 2024)**

b. Adverse Employment Action

***Ahmed v. Sch. Dist. of Hamtramck*, 2024 WL 1287608 (D. Mich. Mar. 25, 2024)**

Plaintiff, superintendent of defendant school district, involuntarily transferred multiple teachers in her capacity as superintendent, leading to conflicts with members of the school district and media attention. These circumstances caused plaintiff to experience stress and led her to take a medical leave for three months. When she attempted to return from her medical leave, she was informed that she had been involuntarily placed on medical leave while an investigation into alleged misconduct took place. In response, plaintiff filed a Complaint alleging thirteen causes of action, ranging from civil rights violations to breach of contract claims.

Plaintiff moved to amend the complaint, including adding an FMLA claim alleging defendant violated the FMLA by not allowing her to return to work after her doctor released her to return. The district court rejected the motion, concluding that it could not survive a 12(b)(6) motion to dismiss, holding that although plaintiff could show an adverse action, she failed to demonstrate a causal connection between the adverse action and her FMLA activity.

Plaintiff contended that the Sixth Circuit held in *Threat v. City of Cleveland*, 6 F.4th 672 (6th Cir. 2021), that plaintiffs no longer need to demonstrate they suffered an adverse employment action to establish a *prima facie* FMLA claim. Although the court disagreed with plaintiff and held that the Sixth Circuit was simply clarifying that the only actionable employment actions are ones that are adverse and material to work, the court nonetheless concluded that while being placed on

administrative leave pending an investigation is generally not an adverse employment action, plaintiff met the requirement by sufficiently alleging that no investigation actually occurred.

However, the court concluded that plaintiff failed to demonstrate a causal connection between the adverse employment action and the FMLA activity. It reasoned that defendant had many reasons to take an adverse employment action against plaintiff, such as her involuntary dismissal of the teachers. Since plaintiff failed to allege any causal connection between her FMLA activity and the adverse employment action beyond conclusory statements, the court reasoned that she failed to meet the causality requirement of an FMLA claim. Additionally, the court rejected plaintiff's argument that she was treated differently from similarly situated individuals on the grounds that plaintiff's unique circumstances arising from the timing and circumstances of the transfers made this case sufficiently distinguishable.

***Barbuto v. Syracuse University*, 2024 WL 3519684 (N.D.N.Y. Sept. 10, 2024)**

Plaintiff worked for defendant as a custodian. In March 2021, defendants approved plaintiff's request to take FMLA leave to care for his husband. That fall, plaintiff elected to take advantage of one of his fringe benefits of employment, which was remitted tuition. In December 2021, as plaintiff attempted to register for spring classes, defendants imposed a stipulation on plaintiff directing him not to attend classes on any day he called out of work on FMLA leave or for any other reason. In April 2022, plaintiff made several verbal and written complaints claiming that he was being discriminated against because of his FMLA status. On March 31, 2022, defendant assured plaintiff the stipulation would be removed and followed up by sending plaintiff a copy of a revised class arrangement without the stipulation on April 4, 2022. However, the stipulation remained in place until April 12, 2022.

The court denied defendant's motion to dismiss plaintiff's FMLA interference claim, holding that plaintiff has plausibly alleged that the stipulation preventing him from attending classes on days he took FMLA leave would have dissuaded similarly situated employees from exercising FMLA rights.

The court also denied dismissal of Plaintiff's FMLA retaliation claim. Since plaintiff did not allege retaliatory intent, he needed to establish a causal connection based on the closeness in time between his protected activity and the adverse employment action. The court found plaintiff had plausibly alleged that causal connection since he requested FMLA leave in March 2022, which he took intermittently, and the adverse action occurred in December 2022.

***Boone v. City of Phoenix*, 2024 WL 3105892 (D. Ariz. June 24, 2024)**

Plaintiff was employed as a dispatcher by defendant when she took an FMLA leave. Plaintiff filed a lawsuit against Defendant alleging that defendant discriminated against and retaliated against her after returning to work from that FMLA leave. Defendant moved for summary judgment on all counts.

The district court in Arizona granted summary judgment on plaintiff's FMLA discrimination and retaliation claims. First, the court held that the only adverse employment action plaintiff alleged occurred was that defendant failed to promote her in 2020, but that plaintiff was unable to point to any evidence that she properly applied for that promotion or that the person hired

by defendant was outside of plaintiff's protected class. Second, to the extent that plaintiff alleges that she was retaliated against because she made defendant aware that its "call-out" list showed which employees had called out of work and the reason they had done so, including FMLA leave, even if defendant's action constituted an unlawful employment practice, plaintiff failed to offer any evidence that she suffered an adverse employment action as a result. Although plaintiff again pointed to the promotion she was allegedly denied, she offered no evidence that she properly applied for that promotion or that defendant hired someone outside her protected class.

***Cary v. Sandoz, Inc.*, 2023 WL 8461638 (N.D. Tex. Dec. 6, 2023)**

Plaintiff, a former oncology assistant for defendant, filed suit against defendant alleging FMLA retaliation, discrimination, and interference. One year prior to the lawsuit, plaintiff suffered a severe concussion during or shortly after a work outing, for which she took FMLA leave. Plaintiff claims that defendant compelled her to resign by continuously humiliating her for taking FMLA leave.

The district court for the Northern District of Texas granted defendant's motion to dismiss. Specifically, the court ruled that plaintiff did not plead sufficient facts to demonstrate constructive discharge because courts have widely held that isolated unfriendly exchanges between an employee and a manager, even if humiliating to the employee, would not cause a reasonable employee to resign. Thus, plaintiff did not satisfactorily plead an adverse action.

***Cary v. Sandoz, Inc.*, 2024 WL 1286959 (N.D. Tex. Mar. 26, 2024)**

Plaintiff, a former oncology assistant for defendant, filed suit against defendant alleging FMLA retaliation, discrimination, and interference. One year prior to the lawsuit, plaintiff suffered a severe concussion during or shortly after a work outing, for which she took FMLA leave. Plaintiff claims that defendant compelled her to resign by humiliating her after she took FMLA leave due to the head injury.

Previously, plaintiff's claims against defendant were dismissed because she failed to sufficiently allege an adverse action. Here, the district court denied plaintiff's motion to amend the previously dismissed complaint because the proposed amendments still did not allege an adverse action. Regarding the retaliation and discrimination claims, the court noted that the proposed amendments failed to demonstrate that defendant's actions compelled her resignation following her FMLA leave. The court emphasized that an isolated hostile incident typically does not compel a reasonable person to resign.

As for the interference claim, the proposed amendments also failed to show that defendant deprived her of her FMLA rights or discouraged her from exercising them. Plaintiff's argument of constructive discharge was not sufficiently alleged, nor did she specify which FMLA right the constructive discharge interfered with.

***Eastmond v. City of Philadelphia*, 2024 WL 3761734 (E.D. Pa. Aug. 12, 2024)**

Plaintiff, a former medical director, filed suit in an Eastern District of Pennsylvania district court against her former employer, the Philadelphia Department of Public Health Defendant, and her former supervisor, alleging seven counts of interference, discrimination, and retaliation under

federal and state law. Prior to this opinion, the district court had entered summary judgment in defendants' favor on all counts except one count of FMLA interference. Plaintiff then filed a motion for reconsideration on the district court's summary judgment ruling with respect to the FMLA retaliation claim.

In support of the motion, Plaintiff argued that (1) the adverse employment action standard stated for Title VII discrimination claims in the recent decision of *Muldrow v. City of St. Louis*, 144 S. Ct. 967 (2024) should have been applied, and (2) the mixed-motive framework should have been applied to the retaliation claim, rather than the *McDonnell-Douglas* framework. However, the court denied the motion to reconsider, reasoning that the Supreme Court had been clear in *Muldrow* that the decision did not disturb the existing standard for retaliation claims and that the *McDonnell-Douglas* framework remained the appropriate means to analyze plaintiff's retaliation claim.

***Gray v. Allen Harim Foods LLC*, 2024 WL 3648241 (D. Del. Aug. 5, 2024)**

Plaintiff, Senior Manager of Human Resources, alleged her employer defendants, poultry processors, retaliated against her in violation of the FMLA. Plaintiff's wife broke her tibial plateau and required full time care. Defendants approved plaintiff for twelve weeks of FMLA leave, but plaintiff returned to work after four weeks. Upon her return, plaintiff remained on intermittent FMLA leave. The day after her return to work, plaintiff began working in a different position which paid $17,000 per year less than plaintiff's former position and had worse benefits. Defendant claims they offered the position to plaintiff, but she claims she was pressured to take the position. Subsequently, plaintiff heard from two members of management that defendants wanted to fire her but were being careful about it, and she believed defendants would fire her at any moment. Plaintiff sent defendants a letter complaining about FMLA violations due to defendants hiring another employee for her position during her leave. Plaintiff resigned on the same day. Defendants claimed they tried to offer her more money to stay, but plaintiff denied any such knowledge. Plaintiff declined a severance offer.

Defendants moved for partial summary judgment and judgment on the pleadings on the issue of constructive discharge, arguing that plaintiff did not have sufficient facts to support constructive discharge because Plaintiff had the choice to remain employed but voluntarily resigned. In response, plaintiff argued that she established a prima facie case of constructive discharge because when viewing the facts in a light most favorable to Plaintiff, a reasonable jury could have found that Defendants' actions immediately upon plaintiff's return from FMLA leave created intolerable working conditions such that a reasonable person would resign. The Delaware district court agreed with plaintiff's argument and denied defendants' motions.

The court discussed the factors the Third Circuit Court of Appeals recognizes when assessing a constructive discharge claim: "the employer (1) threat[en]ed [the employee] with discharge or urge[d] or suggest[ed] that she resign or retire, (2) demote[d] her, (3) reduce[d] her pay or benefits, (4) involuntarily transferred [her] to a less desirable position, (5) altered her job responsibilities, or (6) gave unsatisfactory job evaluations[.]" The court held that there were material disputes over the facts related to the above factors, so summary judgment was not warranted. The court found that plaintiff's complaint about defendants replacing her while on FMLA leave was relevant to whether she was constructively discharged.

***Gunter v City of Omaha*, 2023 WL 9375620 (D. Neb. Dec. 20, 2023)**

In 2017, plaintiff complained of workplace discrimination and harassment. Then, on November 30, 2018, plaintiff suffered an on-the-job rotator cuff injury while lifting salt bags. Thereafter plaintiff's medical provider assigned plaintiff permanent restrictions. The City sent plaintiff a letter indicating that his permanent restrictions were incompatible with the required essential job functions of his full-duty position and suggested plaintiff investigate and apply for a line of duty disability, regular retirement, or resign. Six days later, plaintiff's medical provider lifted the previously announced permanent restrictions. In response, the city scheduled plaintiff for a fitness-for-duty examination, which conflicted with the deadline for a disability, retire, or resign decision. Plaintiff did not notify the city of the conflict. Instead, plaintiff resigned from the city, believing he had no other options.

Plaintiff sued alleging, among other claims, FMLA retaliation.

The city filed a motion for summary judgment, which was analyzed using the *McDonnell-Douglas* burden shifting methodology.

The district court dismissed plaintiff's claims on summary judgment. First, the court found that the *only* claimed adverse employment action was his temporary reassignment, and such temporary assignment could not constitute an adverse employment action because it came in response to restrictions arising from the work injury with no material change in compensation, opportunities or benefits. Furthermore, the court concluded that a temporary reassignment prompted by medical restrictions would unlikely "dissuade a reasonable individual" from protected activities because plaintiff was also offered accommodations while in the temporary position.

Nonetheless, the court also found no evidence of pretext, particularly where the city had significant and documented reasons for the temporary assignment.

***Heaton v. DeJoy*, 2024 WL 1348780 (D. Neb. Mar. 29, 2024)**

Plaintiff, a United States Postal Service employee, brought suit against the Postmaster General, alleging violations of the FMLA's retaliation provision, along with other civil and criminal claims. Defendant moved to dismiss for failure to state a claim. The district court in Nebraska granted the motion to dismiss.

The court found that while taking FMLA leave is a protected action, plaintiff's reassignment from one facility to another, without any allegation of impact on title, salary, or benefits, was insufficient as a matter of law to constitute an adverse employment action. Because plaintiff failed to allege an adverse action, the court did not address causation.

***Kirkland-Hudson v. Mount Vernon City Sch. Dist.*, 2024 WL 4277940 (S.D.N.Y. Sept. 23, 2024)**

Plaintiff, a social worker in a city school, brings an action against the employer, school district, and various district employees alleging numerous claims, including FMLA retaliation. Plaintiff's FMLA leave request for mental/medical self-care was initially denied due to a determination that she established no serious health condition. However, FMLA leave was

designated retroactively after various arguments with staff, even though plaintiff repeatedly requested that the leave be marked as sick leave. Plaintiff's FMLA retaliation claim was based on defendant attempting to hand deliver two letters to her during her leave. The district court noted that both parties made illogical arguments about whether plaintiff actually exercised her FMLA rights, noting it was hard to fathom how an employer's decision to grant unwanted FMLA leave constitutes an *employee's* protected activity. Nevertheless, the court found that there was no adverse action in the hand deliveries, as they included documentation regarding the FMLA leave and how she could extend it. Thus, summary was granted in favor of defendant.

***Lussier v. City of Cape Coral*, 2024 WL 3673603 (M.D. Fla. Aug. 6, 2024)**

Plaintiff filed claims alleging, in part, FMLA retaliation and interference. In ruling on defendant's motion for summary judgment, the district court in the Middle District of Florida granted summary judgment on the FMLA interference claim, finding that plaintiff was never denied any benefit, and she in fact took all but 30 minutes of her FMLA entitlements. The court found that being questioned about taking FMLA leave was insufficient harm, when plaintiff was still able to take her leave. The court similarly granted summary judgment on the retaliation claim, finding that there was no evidence of any adverse employment actions, and in fact, some of the challenged conduct relied on by plaintiff occurred before she even took FMLA leave.

***McLaughlin v. Walmart*, 2023 WL 7706262 (E.D. Pa. Nov. 15, 2023)**

Plaintiff employee sued her former employer alleging FMLA interference and retaliation. The Pennsylvania district court granted defendant's motion for summary judgment because plaintiff failed to properly plead a prima facie case under either theory. Plaintiff put in her two weeks' notice of her resignation but stated that she would not be able to work for those two weeks due to her medical condition. However, plaintiff began working for another employer two days later. Plaintiff's requested FMLA leave was to begin on the same day she began working for another employer.

The court held that plaintiff did not suffer an adverse employment action because she resigned before a decision about her FMLA request could be made by the employer's third-party FMLA evaluation service, and she was no longer an employee of defendant at the time her request would have begun. The court also noted that the above facts precluded a finding of constructive discharge. This case is currently on appeal.

***Steidle v. United States Liability Insurance Co., Inc.*, 2024 WL 4374110 (E.D. Pa. Aug. 26, 2024)**

Plaintiff sued his employer, an insurance company, for FMLA retaliation related to a series of alleged retaliatory actions culminating in his termination, following his use of FMLA leave related to post-traumatic stress disorder. Defendant terminated plaintiff's employment after he had been out on leave for eight months and his medical provider could not provide a date that plaintiff could return to work with or without an accommodation. A district court in Pennsylvania granted defendant's motion for summary judgment on the FMLA retaliation claim.

The court concluded that a meeting with a supervisor (who had no role in determining plaintiff's salary increase or bonus) did not result in a change in plaintiff's status as an employee for defendant and was therefore not an adverse employment action. As to plaintiff's claim that lower than usual salary increases and bonuses constituted an adverse action, the court found that, although this could rise to the level of an adverse employment action, it did not in this case because nothing in the record demonstrated that plaintiff's performance in the relevant years merited a higher discretionary bonus and salary.

The court also concluded that plaintiff could not demonstrate a causal connection between his protected activity and any retaliatory action. The court found that, even though defendant's 2019 bonus decision was made during plaintiff's FMLA leave, the timing of the bonus decision was consistent with the timing of bonus decisions in the six preceding years, and the record evidence supported the conclusion that defendant had legitimate reasons for the salary increase and bonus decisions in 2019 and 2020. The court concluded that plaintiff failed to meet his prima facie burden because there was no adverse action or causal connection.

Summarized elsewhere

Ayala v. Tasty Baking Company, et al, **2004 WL 3889089 (E.D. Pa. Aug. 21, 2024)**

Baker v. Penn State Health Holy Spirit Med. Ctr., **2024 WL 2055002 (M.D. Pa. May 8, 2024)**

Carol B. v. Waubonsee Community College, **2024 WL 3069974 (N.D. Ill. June 20, 2024)**

Castor v. Greater Dayton Reg'l Transit Auth., **2024 WL 384969 (S.D. Ohio Feb. 1, 2024)**

Donithan v. Ohio Dep't of Rehab. & Correction, **2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

Eastmond v. Galkin, **2024 WL 404498 (E.D. Pa. Feb. 2, 2024)**

Fluellen v. City of Philadelphia, **2024 WL 1468331 (E.D. Pa. 2024)**

Fritz v. Allied Services Foundation, **2024 WL 843918 (M.D. Pa. Feb. 28, 2024)**

Gregg v. Northeastern Univ., **2024 WL 3625548 (D. Mass. Aug. 1, 2024)**

Lovelace vs. Ameriprise Financial, Inc., **2024 WL 3300313 (D. Minn. July 3, 2024)**

Marshall v. Westchester Med. Ctr. Health Network, 2024 WL 665200 (S.D.N.Y. Feb. 16, 2024)

Mineo v. Town of Hempstead**, 2024 WL 1077874 (E.D.N.Y. 2024)**

Neal v. Florida HMA Reg'l Servs.**, 2024 WL 2784884 (M.D. Fla. May 30, 2024)**

Woods v. City of St. Louis**, 2023 WL 8185072 (E.D. Mo. Nov. 27, 2023)**

c. Causal Connection

***Bates v. University Hospitals Health System, Inc.*, 2024 WL 4300603 (N.D. Ohio Sept. 26, 2024)**

Plaintiff was hired as a revenue cycle supervisor in October 2018, supervising a team of 20-25 employees. In August 2019, plaintiff was observed as being ineffective in running her weekly team meetings. In 2020, plaintiff began having issues with certain employees on her team. Plaintiff informed her supervisor she needed to take FMLA leave on or around April 19, 2021. On May 28, 2021, plaintiff was placed on a PIP. Plaintiff's supervisors became aware that plaintiff intended to seek additional FMLA leave in mid-September 2021. Less than two months later, plaintiff was terminated. Plaintiff brought an FMLA retaliation claim for the performance improvement plan and ultimately the termination.

The court granted summary judgment to defendant on plaintiff's retaliation claim. The court held that since plaintiff did not dispute she was informed that her deficient performance would result in a PIP one month before she took her first FMLA leave, the fact that defendant moved forward with the plan to place plaintiff on a PIP shortly after she took FMLA leave does not establish a causal connection between the PIP and plaintiff's protected activity.

Plaintiff was also unable to demonstrate a causal connection to support her prima facie case between her termination and her use of FMLA leave. Plaintiff argued that she had made progress on some elements of the PIP and that was sufficient to show that the termination was pretextual. However, the court found that plaintiff failed to submit evidence that the acknowledged performance deficiencies did not, on their own, warrant discharge. Plaintiff ultimately testified her failure to perform all the requirements of the PIP was a legitimate basis for termination. Plaintiff also argued that defendant intended to "progress her through the PIP and then terminate her employment accordingly." However, the court found that the evidence showed that defendant actually extended the PIP over sixty days after her return from FMLA leave to account for that leave time, for a total of over five months on the PIP, and she still failed to meet the requirements of the PIP.

The court ultimately dismissed plaintiff's retaliation claims on summary judgment.

***Beeler v. Union Pacific Railroad Company, et al*, 2024 WL 4225928 (N.D. Ill. Sept. 18, 2024)**

Plaintiff was a union employee and began his employment with defendant on July 9, 2012, holding various positions. On April 16, 2019, the individually named defendant became plaintiff's supervisor. Plaintiff was on FMLA leave from January 2, 2020, to January 29, 2020, and returned to work on January 30, 2020. Plaintiff was scheduled to work the night shift on February 2, 2020 – Super Bowl Sunday – but texted his supervisor that he had a family emergency and would "put FMLA in." Plaintiff's supervisor was fine with plaintiff doing so. On February 3, 2020, plaintiff claimed the time entry portal would not allow him to enter FMLA leave for the same day that he was also entering working hours, so he therefore put in eight working hours each for February 3, 4, and 5 of that week. Plaintiff's co-workers complained plaintiff was not at work on February 5th or 6th, which prompted plaintiff's supervisor to look at plaintiff's time entries to see if he had reported a full timesheet for February 5. The supervisor noticed plaintiff had not submitted any unpaid FMLA time for his shifts spanning February 2 – 3, 2020, and that plaintiff had inputted eight hours of straight time. Defendant terminated plaintiff's employment claiming dishonesty in not properly reporting FMLA time and leaving work without proper authority on February 5 and

February 6, 2020, without properly clocking out. Plaintiff filed a lawsuit alleging that defendant retaliated against him for taking FMLA leave.

The district court granted summary judgment in favor of defendant on plaintiff's retaliation claim because there was insufficient evidence to support a reasonable inference that Plaintiff's FMLA leave caused his suspension and ultimate termination. Plaintiff claimed the suspicious timing and ambiguous statements of his co-workers that defendant relied on to support his termination, created a reasonable inference that his suspension and termination were caused by his FMLA leave. The court held that although plaintiff's termination four days after telling his supervisor of his intent to use FMLA leave was suspicious timing, it was insufficient to establish that the employer's explanation for plaintiff's termination was pretext for retaliation. Plaintiff's inaccurate time entry submitting time for hours not worked and his co-workers' complaints of his not being at work when required during his shift, were complaints that post-dated plaintiff's FMLA leave.

***Boan v. Florida Dept. of Corr.*, 2024 WL 3084388 (11th Cir. June 21, 2024)**

Plaintiff, a warden at one of defendant's correctional facilities, brought suit against her employer for retaliation under the FMLA after she was transferred and later demoted to assistant warden after taking FMLA leave. The district court for the Northern District of Florida granted summary judgment to defendant on all counts, and plaintiff appealed.

The district court concluded that plaintiff failed to produce sufficient evidence showing a causal connection between her use of FMLA leave and defendant's adverse actions. The court reasoned that it was undisputed that plaintiff's transfer was put in place before she even mentioned FMLA leave, and that the time period between her return from leave and defendants' actions was too remote to support causation. The district court also held that even if plaintiff had established a *prima facie* case of FMLA retaliation, defendant had articulated legitimate reasons for its actions and plaintiff had not presented any evidence of pretext.

The appellate court agreed and therefore affirmed the district court's decision to grant summary judgment on plaintiff's claim of retaliation under the FMLA.

***Bomar v. Bd. of Educ. Of Harford Cty.*, 2024 WL 4108530 (D. Md. Sept. 6, 2024)**

Plaintiffs, who worked as assistant principals for defendants, brought suit for retaliation under the FMLA. In the fall of 2018, defendants determined that there would be a budget shortfall for the 2019-20 school year. At the time of the anticipated budgetary shortfall, defendants developed a reassignment process during which 53 candidates applied for, and were considered for, reassignment to secondary level assistant principal positions. As a result of the 2019 Reassignment Process, 13 former assistant principals, including plaintiffs, were demoted from an assistant principal position and reassigned to classroom teaching positions, or to other non-administrative positions. Plaintiffs both took FMLA leave in early 2019. When plaintiff Adkins returned to work in April 2019, defendants did not fully restore her job duties; plaintiff Hall was notified of her non-selection for an assistant principal position and demotion while she was on leave, and neither were selected for assistant principal positions during the 2019 Reassignment Process. Defendants moved for summary judgment on plaintiffs FMLA retaliation claims.

The district court in Maryland held that plaintiff Adkins could not show that she suffered an adverse employment action because Plaintiffs put forward no evidence to show that the removal of her test coordinator duties resulted in a significant change in her employment. The court also held that Plaintiffs could not show a causal connection between their 2019 FMLA leave and their subsequent non-selection for assistant principal positions in August 2019 and thereafter. Plaintiffs took FMLA leave in the spring of 2019 and their non-selections occurred several months later when they were not chosen for the assistant principal positions that were filled in August 2019 and in the summer of 2020, and were therefore too temporally remote for Plaintiffs to establish a causal link.

The court also observed that, to the extent that plaintiffs could establish a prima facie case of FMLA retaliation, their claims nonetheless fail because they could not show that defendants' stated reasons for not selecting plaintiffs were a pretext for FMLA retaliation. Therefore, the court granted defendants motion for summary judgment on plaintiffs FMLA retaliation claims.

***Coffman v. Nexstar Media, Inc.*, 2023 WL 7367631 (S.D.W. Va. Nov. 7, 2023)**

Plaintiff, a former account executive, filed suit against her former news station employer claiming defendant had discriminated and retaliated against her for exercising her FMLA rights. Defendant filed a motion for summary judgment as to plaintiff's FMLA retaliation claim. Defendant did not dispute that plaintiff had engaged in a protected activity and that defendant took an adverse employment action, but defendant argued that the necessary causal link had not been established. Plaintiff argued that the causal link between the protected activity and the adverse employment action stemmed from her supervisor's statement that defendant was "trying to keep [her] off FMLA" so that she could continue working remotely while on bedrest before the expected birth of her twins.

The district court in West Virginia rejected Plaintiff's argument, noting that plaintiff had conceded that she did not want to take FMLA leave at the time because it was still early into her pregnancy. The district court also noted that plaintiff had confirmed that defendant provided her with FMLA paperwork prior to the birth of her twins and she was upset because she did not want to go on FMLA leave at the time. The record also showed that plaintiff had taken FMLA without issue when she later requested it from defendant and that defendant had even given her an additional twelve weeks of leave after her initial leave had expired. The district court held that the facts did not establish a causal link, and the court granted defendant's motion for summary judgment as to the FMLA retaliation claim.

***Coleman v. Children's Hospital of Philadelphia*, 2024 WL 4490602 (3d Cir. Oct. 15, 2024)**

Plaintiff, a nurse supervisor, filed suit against her employer, a children's hospital, challenging her termination after taking medical leave as retaliation in violation of the FMLA. Plaintiff took FMLA leave at the end of 2020 for a gallbladder removal and for COVID-19, but was terminated in March 2021 for over-reporting hours on her timecard. The district court for the Eastern District of Pennsylvania granted summary judgment in favor of defendant, finding that plaintiff had failed to prove a causal connection between defendant's decision to terminate her employment and her invocation of FMLA rights. Notably, it was undisputed that the individual

who recommended termination for lying on a timecard did not know of plaintiff's prior medical leave. Plaintiff appealed.

The Court of Appeals agreed with the district court and affirmed summary judgment in defendant's favor, finding that plaintiff failed to establish a prima facie case under the FMLA. Most significantly, the court agreed that the temporal proximity of plaintiff's FMLA and the adverse action of nearly three months was too attenuated to create an inference of causation, and the proffered circumstantial evidence of retaliation was speculative. The court also agreed that FMLA leave could not have been a factor in the termination decision where the deciding official did not know that plaintiff had taken leave.

***Cooper v. Cnty. of York o/a York Cnty. Prison*, 2024 WL 183013 (M.D. Pa. Jan. 17, 2024)**

Plaintiff, a correctional officer, sued his former employer, a county prison, for FMLA retaliation. Plaintiff applied for, and was granted, intermittent leave under the FMLA. The next year, his supervisor asked when he could resume full-duty status and whether he could perform the essential functions for a corrections officer position. Plaintiff responded that it depended on the position, but also confirmed that he could not work a post that required him to walk stairs. A few weeks later, defendant terminated plaintiff's employment.

The district court in Pennsylvania granted defendant's motion for summary judgment, holding that there were insufficient facts to show a causal relationship because plaintiff had requested, and was continually approved for, intermittent FMLA leave at least nine months before his termination. The district court also noted a lack of any evidence suggesting defendant disapproved of plaintiff taking FMLA leave. Because plaintiff relied only on subjective feelings and beliefs that defendant disapproved of his FMLA leave, the district court held that plaintiff had not established a *prima facie* claim of FMLA retaliation.

***Cumby v. Sunbelt Rentals, Inc.*, 2024 WL 2725183 (W.D.N.Y. May 28, 2024)**

Plaintiff, a profit center manager for defendant rental company, brought a lawsuit against defendant alleging retaliation for his use of FMLA leave. Plaintiff requested seven weeks of FMLA leave to care for his wife. He then requested FMLA leave intermittently, requesting approximately one day per month, to continue assisting his wife with travel. Defendant granted those requests. However, plaintiff's employment was terminated soon after because plaintiff rescheduled a meeting.

Defendant moved to dismiss plaintiff's complaint, arguing that plaintiff failed to state a claim for FMLA retaliation. The district court in the Western District of New York denied defendant's motion, holding that plaintiff sufficiently pled a causal connection between the protected activity and the adverse employment action. First, the court reasoned that plaintiff had plausibly alleged an FMLA retaliation claim because his participation in FMLA-protected intermittent leave appears to have been active when he was terminated, such that his protected activity may be sufficiently close in time to the adverse employment action. Second, the court reasoned that plaintiff adequately alleged, at this early stage of proceedings, circumstances giving rise to an inference of retaliatory intent, by alleging that his FMLA protected activity was closely

followed in time by the adverse action such that defendant may have attempted to retaliate for its use.

***Daywalker v. UTMB at Galveston*, 2024 WL 94297 (5th Cir. Jan. 19, 2024)**

Plaintiff, an Otolaryngology resident, requested that her leave of absence be converted to FMLA leave. Her request was granted. However, on her first day returning from leave she was notified that she would have to repeat her third year of residency, at which time plaintiff resigned. Plaintiff filed suit against defendant medical university and its then-president alleging discrimination for taking FMLA leave. The district court for the Southern District of Texas granted defendants' motion for summary judgment and dismissed the FMLA claim, holding that plaintiff had not offered evidence of the causal link between her request for FMLA leave and the decision to retain her as a third-year resident rather than a fourth-year resident. Plaintiff appealed.

On appeal, plaintiff argued that the short temporal link of a few months between the time defendants were put on notice of her disabilities and requested FMLA leave established causation. The appellate court disagreed with plaintiff, finding that the record contained numerous sources providing that defendant decided to have plaintiff repeat certain third-year rotations prior to receiving her request to convert her personal leave to FMLA leave. The court concluded that summary judgment in favor of defendant was appropriate as to the FMLA retaliation claim as plaintiff did not create a fact issue pertaining to the causal link between her protected activity and the alleged discriminatory terms, conditions, or privileges of employment.

***Dolleh v. Sugarhouse HSP Gaming, L.P.*, 2024 WL 4351636 (E.D. Pa. Sept. 30, 2024)**

Plaintiff brought suit under the FMLA for retaliation and interference, and defendant moved for summary judgment. On the day plaintiff was scheduled to go on FMLA leave, the third-party benefits administrator informed plaintiff by mail that his FMLA leave was under review. Plaintiff claimed he never received this letter. Plaintiff was then sent a denial of his FMLA claim. Defendant's human resources department reached out to plaintiff via phone call and email informing him that his FMLA leave was denied and requested updates on his leave status. Plaintiff did not respond. Human resources then sent plaintiff a 24-hour notice letter informing him that if HR did not hear from him within 24 hours that he would be terminated. After contacting human resources, plaintiff returned to work according to the "return to work" notice he received from his physician. Plaintiff also signed an Attendance Notification form. Plaintiff attempted to work out the issues regarding his denied leave with the third-party administrator but was terminated by defendant in the interim for failure to comply with the company's attendance policy.

To prevail on a FMLA retaliation claim, Plaintiff must prove that (1) he invoked his right to FMLA qualifying leave, (2) he suffered an adverse employment decision, and (3) the adverse action was causally related to his invocation of rights. The only issue for the court to consider was whether the adverse action in this case was causally related to the invocation of FMLA rights. The time period at issue in this case is 19 days, and the district court for the Eastern District of Pennsylvania concluded that a reasonable fact finder could determine that time frame to be unduly suggestive of retaliatory intent. The court further held that even if the temporal proximity was not sufficient, defendant's reasons for termination included absences encompassed by plaintiff's

FMLA leave also supports an FMLA retaliation claim. The court denied summary judgment on the retaliation claim.

As for the FMLA interference claim, the court held that in cases where the factual basis for the FMLA retaliation and interference claims follow the same factual basis, a court may apply the same reasoning of a retaliation claim to an interference claim and therefore, as with plaintiff's retaliation claim, the court found that plaintiff met their burden and denied summary judgment.

***Fowler v. District of Columbia*, 2024 WL 4345813 (D.D.C. Sept. 30, 2024)**

Plaintiff, who worked as a licensing specialist at the Alcohol Beverages Regulation Administration, was suspended for repeated tardiness, which she disputed, and was later put on a PIP. Around the same time, she notified she planned to retire about six months in the future, and she requested FMLA leave "to recuperate and undergo a procedure for her disability." Defendant terminated her employment, and she then pursued numerous claims, including FMLA retaliation. Defendant asserted plaintiff could not establish a causal link because her termination notice was signed by her manager *before* she filed her FMLA leave application. Plaintiff countered that she had notified HR of her need for FMLA leave two days before her manager signed the termination notice; however, she provided no evidence that her manager was aware of her conversation with HR before he signed the termination notice. The court granted summary judgment, finding plaintiff has not proferred sufficient evidence for a jury to infer that the manager knew of the conversation with HR, such that it could have caused him to propose her termination.

The court found her FMLA interference claim failed for a second independent reason; namely, that the manager proposed plaintiff's termination for legitimate, nondiscriminatory reasons. The manager identified a variety of performance deficiencies, which had been documented in her PIP and follow up discussions, including failure to submit overdue cases to management, failure to meet deadlines, failure to submit monthly reports, failure to correct errors promptly, and more. Plaintiff provided no evidence that defendant's reasons were pretextual.

***Franco v. American Airlines, Inc.*, 2024 WL 4524614 (S.D.N.Y. Oct. 18, 2024)**

Plaintiff, a senior corporate communications specialist, alleged defendant airline retaliated against him for requesting a leave of absence in violation of the FMLA. The district court in the Southern District of New York adopted the magistrate judge's report and recommendation to grant defendant's motion for summary judgment.

The court held that plaintiff failed to establish a *prima facie* case of FMLA retaliation because there was insufficient evidence of causation. The court reasoned that defendant began taking gradual adverse job actions prior to the FMLA request and decided to terminate him before the FMLA request. Plaintiff was terminated less than five days after he submitted his FMLA request. However, the court found that this timing alone did not raise an inference of retaliatory intent because plaintiff received a Final Warning Letter and HR personnel exchanged emails about the decision to terminate plaintiff before he submitted his FMLA leave request. Therefore, it was clear that the decision to terminate plaintiff occurred before his FMLA request was submitted. The court relied on Second Circuit precedent in reasoning that where timing is the only basis for a

claim of retaliation, and gradual adverse job actions began well before plaintiff had ever engaged in any protected activity, an inference of retaliation does not arise.

Lastly, when objecting to the magistrate judge's report and recommendation, plaintiff raised the issue that defendant had allegedly been constantly advising him to consider FMLA leave. The court did not regard plaintiff's argument, reasoning that such advisement would not lead to the inference that plaintiff's job was at risk or that he was terminated for eventually requesting FMLA leave.

***Kelly v. Kinder Morgan, Inc.*, 2024 WL 3969683 (E.D. Pa. Aug. 28, 2024)**

Plaintiff, a cargo loading/offloading supervisor, sued his employer for various claims under the ADA, FMLA, and ADEA, along with Pennsylvania state law. Plaintiff took several FMLA leaves throughout his employment. In November 2021, while on a Performance Improvement Plan, plaintiff took FMLA leave to detox from pain medication. He returned to work and later took additional leave when his mom passed away and when he had COVID. He remained on the PIP and when his supervisors decided he was not progressing, he was terminated in March 2022.

Plaintiff's FMLA claims were for interference and retaliation. Defendant moved for summary judgment on all claims. For his interference claim, the Pennsylvania district court found that at no point was plaintiff denied FMLA leave, which is a requirement for an interference claim. Plaintiff took FMLA leave three times during his employment without issue. Therefore, the court granted summary judgment in favor of defendant on the interference claim.

As for the retaliation claim, the court found that there were disputed material facts as to whether his termination was motivated by his use of FMLA leave rather than a poor performance review as there was no termination discussion before plaintiffs last use of FMLA leave.

***Lapham v. Walgreen Co.*, 88 F.4th 879 (11th Cir. 2023)**

Plaintiff sought FMLA leave to take care of her son. Due to ongoing clerical issues and misunderstandings, plaintiff first requested FMLA leave on February 16, 2017, but her leave request had not yet been approved or denied by April 13, 2017, the time of her firing. Plaintiff brought suit against defendant pharmacy chain for FMLA discrimination alleging that defendant fired her in retaliation for using FMLA leave. The district court entered summary judgment for defendant, and plaintiff appealed to the Eleventh Circuit, which affirmed, holding that the appropriate causation standard in an FMLA retaliation case is "but for" causation. That is, absent the protected activity, would the employer have taken the alleged retaliatory action? This is in contrast to the more lenient "motivating factor" standard, wherein the worker needs only to show that their protected activity was any one of several reasons the alleged retaliatory action was taken. Reviewing the record, the circuit court held that there was sufficient evidence that defendant would have fired plaintiff independently of her FMLA request, and plaintiff had not provided evidence to the contrary to overcome that showing.

***Leon v. Bensalem Twp. School Dist.*, 2024 WL 3744352 (E.D. Pa. Aug. 9, 2024)**

Plaintiff served as the Assistant to the Superintendent for defendant school district. After plaintiff began to experience an allegedly hostile work environment based on her gender, she experienced stress and medical symptoms that necessitated her taking FMLA leave. When she

returned to work, several of her duties had been passed to another employee and were not returned to her. After plaintiff voiced her concerns and nothing was done, she retired, and then brought suit alleging constructive discharge.

Defendant moved to dismiss plaintiff's complaint. The district court in the Eastern District of Pennsylvania dismissed plaintiff's FMLA interference claim, finding that there was no interference with her rights to take FMLA leave, and vague allegations of being dissuaded from further exercising her rights were insufficient. On plaintiff's FMLA retaliation claim, the court found that plaintiff plausibly alleged retaliation based on her constructive discharge, given the temporal proximity between returning from FMLA leave and the pattern of hostile actions that began thereafter.

***Lloyd v. Twin Cedars Youth & Fam. Servs., Inc.*, 2024 WL 247066 (M.D. Ga. Jan. 23, 2024)**

Plaintiff took approved FMLA leave after surgery. When she was ready to return to work at the end of her leave, she provided Defendant with medical certification noting basic work restrictions that did not actually apply to her position. Defendant then terminated her employment a week later, before she could return to work. Plaintiff sued alleging FMLA retaliation and interference.

On retaliation, the district court determined that defendant could not articulate a legitimate, nonretaliatory reason for her termination where her termination cited her FMLA status and an inability to accommodate her restrictions, terminated her before she could return to work, and cited a false reason for her termination. On interference, the district court denied summary judgment to the employer on plaintiff's interference claim because in firing her on the day after her leave expired, a reasonable jury could find they denied her reinstatement to the same or similar position.

***Tucker v. Concrete*, 2024 WL 1485992 (D.N.J. Apr. 5, 2024)**

Plaintiff, a ready-mix truck driver, brought suit against defendant for FMLA interference and retaliation. Plaintiff argued that defendant terminated his employment in retaliation for taking intermittent FMLA leave to care for his autistic son. Defendant filed a motion for summary judgment, alleging that plaintiff was terminated for failing to comply with its attendance policy.

The court denied defendant's motion for summary judgment. The court found that a trier of fact could infer that defendant improperly considered two of plaintiff's FMLA-protected absences to care for his autistic son as a negative factor when defendant decided to terminate plaintiff's employment. Additionally, the court found that there were factual disputes surrounding plaintiff's invocation of his right to FMLA leave to care for his autistic son on two dates, and these absences resulted in discipline and termination under defendant's attendance policy.

Summarized elsewhere

***Ahmed v. Sch. Dist. of Hamtramck*, 2024 WL 1287608 (D. Mich. Mar. 25, 2024)**

***Anderson v. Lawrence Hall Youth Servs.*, 2024 WL 1342586 (7th Cir. Mar. 29, 2024)**

***Barbuto v. Syracuse University*, 2024 WL 3519684 (N.D.N.Y. Sept. 10, 2024)**

***Chandler v. Sheriff, Walton Cnty.*, 2023 WL 7297918 (11th Cir. Nov. 6, 2023)**

***Chavous v. City of Saint Petersburg*, 2024 WL 366243 (11th Cir. Jan. 31, 2024)**

***Curtis v. City of Newark*, 2024 WL 3594329 (D.N.J. July 31, 2024)**

***Cypher v. J.V. Mfg. Co.*, 2024 WL 3827765 (W.D. Pa. Aug. 14, 2024)**

***DeFranco v. New York Power Auth.*, 731 F.Supp.3d 479 (W.D.N.Y. 2024)**

***DeJesus v. Bon Secours Cmty. Hosp.*, 2024 WL 554271 (S.D.N.Y. Feb. 12, 2024) reconsideration denied, 2024 WL 1484253 (S.D.N.Y. Apr. 5, 2024)**

***Donithan v. Ohio Dep't of Rehab. & Correction*, 2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

***Duncan v. North Broward Hosp. Dist.*, 2024 WL 962357 (S.D. Fla. 2024)**

***Farmer v. FilmTec Corp.*, 2024 WL 4239552 (D. Minn. Sept. 19, 2024)**

***Fenton v. Dollar Tree Stores, Inc.*, 2024 WL 4372310 (M.D. Pa. Oct. 2, 2024)**

***Hamrick v KM Plant Servs, Inc.*, 2023 WL 8790263 (C.D. Ill. Dec. 18, 2023)**

***Kurtanidze v. Mizuho Bank. Ltd.*, 2024 WL 1117180 (S.D.N.Y. Mar. 13, 2024)**

***Lovelace vs. Ameriprise Financial, Inc.*, 2024 WL 3300313 (D. Minn. July 3, 2024)**

***Maier v. UPS*, 721 F. Supp. 3d 693 (N.D. Ill. 2024)**

***McBeath v. City of Indianapolis*, 2024 WL 1885849 (S.D. Ind. Apr. 29, 2024)**

***Mineo v. Town of Hempstead*, 2024 WL 1077874 (E.D.N.Y. 2024)**

***Mitura v. Finco Servs., Inc.*, 712 F.Supp.3d 442 (S.D.N.Y. 2024)**

***Morris v. New York State Dept. of Corr.*, 2024 WL 4252049 (N.D.N.Y. Sept. 20, 2024)**

***Nash v. Advocate Aurora Health, Inc.*, 2023 WL 8718120 (N.D. Ill. Dec. 18, 2023)**

***Nelson v. Ursa Major Corp.*, 2024 WL 249388 (E.D. Wis. Jan. 23, 2024); *aff'd*, *Nelson v. Ursa Major Corp.*, (7th Cir. Nov. 20, 2024)**

***Royston v. City of Scottsdale*, 2024 WL 4277871 (D. Ariz. Sept. 24, 2024)**

***Sparrow v. Washington Metro. Area Transit Auth.*, 2024 WL 3551962 (D.D.C. July 26, 2024)**

***Steidle v. United States Liability Insurance Co., Inc.*, 2024 WL 4374110 (E.D. Pa. Aug. 26, 2024)**

***Tornabene v. City of Blackfoot*, 2024 WL 4145753 (D. Idaho Sept. 11, 2024)**

***Uttarwar v. Lazard Asset Mgmt. LLC*, 2024 WL 1251177 (S.D.N.Y. Mar. 22, 2024)**

i. Temporal Proximity

***Beardson v. Franciscan All., Inc.*, 2023 WL 8811124, (N.D. Ind. Dec. 20, 2023)**

Plaintiff telephone operator brought suit under the FMLA, alleging that defendant retaliated against her for taking FMLA leave to care for her daughter. Plaintiff had been placed on a short leave to address performance concerns, and, upon the conclusion of the performance leave, began taking intermittent FMLA leave. According to defendant, plaintiff's performance never improved during the working periods between the intermittent FMLA leaves, so she was terminated.

The court granted summary judgment in favor of defendant, holding that plaintiff could not show a genuine dispute in support of her claims. First, the court emphasized that "suspicious timing" of a termination does not constitute evidence of a causality that would support retaliation. The court further noted that plaintiff had long-standing performance deficiencies and failed to remedy them. Moreover, defendant had offered plaintiff progressive improvement measures prior to the termination.

***Castor v. Greater Dayton Reg'l Transit Auth.*, 2024 WL 384969 (S.D. Ohio Feb. 1, 2024)**

Plaintiff, a former employee of defendant, filed a lawsuit alleging retaliation under the FMLA. Plaintiff began working as a bus driver for defendant in 2015. Plaintiff requested and was granted multiple FMLA leaves during his employment, the last of which occurred in April 2020. Plaintiff continued to take unpaid leaves while defendant evaluated whether, and to what extent, plaintiff required accommodations until, in January 2022, plaintiff was terminated for his absence of objective symptoms, refusal to drive the required bus routes, and because he failed to attend a required medical evaluation.

The district court for the Southern District of Ohio granted defendant's motion for summary judgment, holding that plaintiff failed to establish a prima facie case for FMLA retaliation. Specifically, the court held that plaintiff did not demonstrate a causal connection between the protected FMLA activity ending in April 2020 and the adverse employment action in January 2022, given the 21-month gap in time. The court rejected plaintiff's argument that his unpaid leave was an ongoing retaliation because the undisputed facts above showed that defendant attempted to bring plaintiff back to work on multiple occasions, but plaintiff refused.

***DeFranco v. New York Power Auth.*, 731 F.Supp.3d 479 (W.D.N.Y. 2024)**

Plaintiff, a security sergeant at one of defendant's power facilities, experienced a medical episode where he blacked out and was found on the floor of the security department badging room

in a semi-conscious state by his supervisor. Despite plaintiff advising the supervisor that he was having medical issues and was scheduled to see a physician later that morning for work-related stress, the supervisor accused plaintiff of sleeping on the job. Later that day, plaintiff submitted a leave request under the FMLA, which was granted. When plaintiff returned to work, he was summoned to a meeting during which defendant informed plaintiff that his employment was terminated due to his alleged poor job performance and alleged sleeping on the job. Plaintiff filed an action against defendant alleging FMLA retaliation. The district court for the Western District of New York initially dismissed plaintiff's complaint without prejudice and ordered him to file a motion to amend attaching an amended complaint, which plaintiff did. Defendant responded to plaintiff's motion by renewing its motion to dismiss.

The court denied defendant's motion and granted plaintiff's motion to amend. The court held that plaintiff sufficiently plead a prima facie case for FMLA retaliation, and that given the temporal proximity of about a month, plaintiff's allegations were sufficient to state a plausible claim that plaintiff was fired in retaliation for exercising his rights under the FMLA.

***Franco v. American Airlines Inc.*, 2024 WL 1054865 (S.D.N.Y. Feb. 16, 2024)**

Plaintiff, who was proceeding pro se, filed an employment discrimination case which included a claim under the FMLA for retaliation. Defendant American Airlines filed a motion for summary judgment, which was granted by the court holding there was no showing that his termination was motivated by an inference of discrimination, there were legitimate reasons for his termination, and Plaintiff offered no evidence that Defendant's reasons were pretextual.

On the FMLA claim, plaintiff questioned the timing of his termination vis-à-vis his FMLA application. The undisputed evidence showed that the decision to terminate plaintiff occurred before his FMLA application was made, so no inference of retaliation based only on timing arose.

***Gugino v. Eerie County*, 2024 WL 3510306 (W.D.N.Y. July 18, 2024)**

Plaintiff, a Sheriff's Deputy, took FMLA leave to care for his mother. A few months later, he was arrested and charged with criminal possession of a controlled substance (cocaine), unlawful possession of marijuana, and operating a motor vehicle without an inspection certificate. Thereafter, plaintiff tested positive for cocaine and marijuana and was charged with operating a motor vehicle while impaired by drugs. As a result of his arrest, he was placed on administrative leave without pay. He subsequently sued the county, alleging FMLA violations by applying his sick leave to certain days taken off work, by retroactive designation of his FMLA leave, and by refusing to pay him for leave taken when he was quarantining after exposure to COVID-19. Plaintiff further asserted defendant pursued criminal charges against him resulting in his suspension in retaliation for his taking FMLA leave.

The court granted defendant's motion for summary judgment, finding, first, the FMLA permits an employer to "require the employee to substitute accrued paid leave for unpaid FMLA leave." 29 C.F.R. § 825.207(a). Thus, this practice is therefore not an adverse employment action. Second, the court found plaintiff had not identified how retroactively designating his FMLA caused him harm or injury, citing 29 C.F.R. § 825.301(d) (providing that employer may take longer than five business days to designate FMLA leave and may "retroactively designate leave as FMLA

leave" only if doing so "does not cause harm or injury to the employee[ ]"). Third, the county followed its policies with respect to plaintiff's COVID quarantine in the same manner it had *before* he had requested FMLA leave. Finally, the court assumed *arguendo* the suspension without pay was an adverse employment action, but found plaintiff provided no evidence to support an inference of retaliatory intent. The court found that while temporal proximity weighed in favor of an inference of retaliation, as plaintiff used his FMLA leave periodically during the approximately six months prior to his suspension without pay and his last use of FMLA leave occurred only sixteen days prior to his suspension. However, the criminal charges against plaintiff broke the causal connection between his exercise of FMLA rights and his suspension without pay. Thus, the court concluded no rational jury could find evidence of retaliation.

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***Haynes v. DeLoach*, 2024 WL 4226785 (M.D. Fla. Sept. 18, 2024)**

Plaintiff, a corrections deputy for a jail, was investigated along with other colleagues following a failed inmate count. Soon after being notified of the investigation, plaintiff requested twelve weeks of FMLA for his son's emergency surgery. The leave was conditionally approved, contingent on receiving medical certification, which was faxed to his employer on November 10,

2021. Plaintiff was notified of a discipline recommendation of a 36-hour suspension, written reprimand, and one year of probation on November 8, 2021. Plaintiff's employment was terminated November 10, 2021.

Plaintiff brought suit alleging, *inter alia*, claims alleging interference and retaliation in violation of the FMLA. The district court in the Middle District of Florida denied defendant's motion for summary judgment. For the interference claim, the court found that plaintiff requested and was conditionally approved for FMLA leave but was prevented from using all available FMLA benefits because of his termination. Although employer motive is typically not relevant in a FMLA interference claim, when the employee is denied rights due to termination, an employer may defend the claim by arguing the termination was for legitimate reasons. Here, the court held that plaintiff sufficiently cast doubt on the reason for his termination. such that summary judgment was not warranted.

For his retaliation claim, the court held that despite the investigation beginning before plaintiff requested FMLA leave, discipline recommendations were not made until the day defendant received plaintiff's medical certification, and the record did not show the "writing was on the wall" regarding his termination before his protected activity.

***Knapp v. Thompson Grp., Inc.*, 2023 WL 8810785 (E.D. Pa. Dec. 19, 2023)**

Plaintiff, who was employed by defendant as a general contractor, was terminated two days after the end of FMLA leave for job abandonment. Defendant terminated plaintiff before scheduling plaintiff's employer-mandated fitness for duty evaluation. Plaintiff brought suit alleging FMLA interference and retaliation. Defendant moved for summary judgment on all claims. The district court granted defendant's motion on plaintiff's FMLA interference claim because all FMLA leave rights had been exhausted at the time of his termination.

In contrast, the district court denied defendant's motion as to plaintiff's FMLA retaliation claim. The court found that the relevant date for evaluating whether temporal proximity established causation was the end of plaintiffs' FMLA leave period, not the beginning date of the FMLA leave. Given that plaintiff was terminated two days after the end of his FMLA leave, the district court relied on Third Circuit precedent, which holds that "when the temporal proximity between the protected activity and adverse action is 'unduly suggestive' this 'is sufficient standing alone to create an inference of causality and defeat summary judgment.'" In addition, defendant's failure to schedule plaintiff's fitness for duty evaluation prior to plaintiff's termination was sufficient to satisfy plaintiff's burden with regard to pretext.

***Rose v. Eagle Express Lines, Inc.*, 2023 WL 7327437 (E.D. Pa. Nov. 7, 2023)**

Plaintiff truck driver sued his employer and its successors in interest for FMLA retaliation after defendants refused to reinstate him after he took FMLA leave for cardiovascular surgery. Defendants moved for summary judgment. Analyzing the *prima facie* case, the court found evidence of a causal link between plaintiff's invocation of FMLA rights and defendants' refusal to reinstate him based on the temporal proximity – the adverse employment action immediately followed plaintiff's leave. The court found that defendants had articulated a legitimate, nondiscriminatory reason for refusing to reinstate plaintiff: a third-party medical review officer identified issues that could prevent plaintiff from driving a truck safely. However, the court

found evidence that defendants' articulated justification was pretextual: plaintiff's doctor had cleared him to return to work. Because plaintiff's evidence of discrimination and pretext was sufficient to allow a reasonable factfinder to conclude that defendants unlawfully refused to reinstate plaintiff, the court denied summary judgment on the FMLA retaliation claim.

***Woodard v. Cmty. Health Centers Inc.*, 2024 WL 3641399 (W.D. Okla. Aug. 2, 2024)**

Plaintiff sued defendant, her former employer, alleging, among other claims, retaliation for exercising her rights under the FMLA. On November 8, 2021, plaintiff applied for intermittent leave under the FMLA to assist in the care of her father, a cancer patient. On January 20, 2022 plaintiff submitted a complaint to her direct supervisor alleging "discrimination (age and education), harassment/bullying, retaliation, isolated workplace environment, and lack of employee development plan." Six days later, plaintiff suffered a panic attack at work and requested FMLA leave request for time off through February 14, 2022 due to her own serious health condition (chronic anxiety). Plaintiff's leave was granted, and she returned on February 15, 2022. On February 16, plaintiff requested an update regarding the complaint she had submitted on January 20. Human Resources responded to plaintiff later in the day on February 16, informing her that she was being assigned to a new supervisor with a change in her role in response to her complaint. Plaintiff was dissatisfied with this response, stating that she felt she was "constantly being discriminated against and punished." A Human Resources representative spoke with plaintiff on the phone the next day. The Human Resources representative ended the call by stating that she would coordinate a meeting between plaintiff and her new supervisor to discuss plaintiff's new role. Plaintiff's new supervisor, however, was unavailable to meet. The Human Resources representative then put plaintiff on administrative leave for two days, testifying that she put plaintiff on leave solely because the new supervisor was unable to meet and additional time was necessary to determine plaintiff's new duties. On February 18, 2022, plaintiff submitted two additional complaint letters to Human Resources, alleging further retaliative behavior, bullying, and discrimination. After receiving the additional complaints, plaintiff's employment was terminated "due to insubordination."

Regarding the FMLA, plaintiff claimed that she was entitled to relief because defendant retaliated against her for using FMLA leave by placing her on administrative leave and terminating her employment. Defendant moved for summary judgment. In reviewing the summary judgment record, the court noted that plaintiff engaged in protected activity by taking FMLA leave and that shortly thereafter defendant ended her employment. Consequently, because the termination was "very closely connective in time" to plaintiff's exercise of her FMLA rights, the court determined that plaintiff had established a prima facie case of FMLA retaliation. Moreover, the court determined that plaintiff produced sufficient evidence to raise a genuine dispute of material fact that defendant's stated reason for her termination was pretextual. The court denied defendant's motion for summary judgment.

Summarized elsewhere

***Baker v. Penn State Health Holy Spirit Med. Ctr.*, 2024 WL 2055002 (M.D. Pa. May 8, 2024)**

***Bartol v. City of Chattanooga*, 2024 WL 1740337 (E.D. Tenn. Mar. 18, 2024)**

***Boan v. Florida Dept. of Corr.*, 2024 WL 3084388 (11th Cir. June 21, 2024)**

***Chandler v. Sheriff, Walton Cnty.*, 2023 WL 7297918 (11th Cir. Nov. 6, 2023)**

***Coleman v. Children's Hospital of Philadelphia*, 2024 WL 4490602 (3d Cir. Oct. 15, 2024)**

***Cumby v. Sunbelt Rentals, Inc.*, 2024 WL 2725183 (W.D.N.Y. May 28, 2024)**

***Daywalker v. UTMB at Galveston*, 2024 WL 94297 (5th Cir. Jan. 19, 2024)**

***Decou-Snowton v. Jefferson Par.*, 2024 WL 1555424 (E.D. La. Apr. 8, 2024)**

***DeJesus v. Bon Secours Cmty. Hosp.*, 2024 WL 554271 (S.D.N.Y. Feb. 12, 2024), reconsideration denied, 2024 WL 1484253 (S.D.N.Y. Apr. 5, 2024)**

***Dolleh v. Sugarhouse HSP Gaming, L.P.*, 2024 WL 4351636 (E.D. Pa. Sept. 30, 2024)**

***Donithan v. Ohio Dep't of Rehab. & Correction*, 2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

***Eskridge v. Dufresne Spencer Grp. LLC*, 2024 WL 3426774 (N.D. Ill. July 15, 2024)**

***Farmer v. FilmTec Corp.*, 2024 WL 4239552 (D. Minn. Sept. 19, 2024)**

***Fenton v. Dollar Tree Stores, Inc.*, 2024 WL 4372310 (M.D. Pa. Oct. 2, 2024)**

***Franco v. American Airlines, Inc.*, 2024 WL 4524614 (S.D.N.Y. Oct. 18, 2024)**

***Gaston v. Henry Ford Health*, 2023 WL 8788946 (E.D. Mich. Dec. 19, 2023)**

***Goines v. City of Ringgold*, 2024 WL 3816651 (N.D. Ga. July 11, 2024)**

***Khan v. ELRAC, LLC.*, 2024 WL 1344694 (D. Conn. Mar. 29, 2024)**

***Lloyd v. Baltimore Police Department*, 2024 WL 4264902 (D. Md. Sept. 20, 2024)**

***Mattern v. PKF O'Connor Davies*, 2024 WL 3937751 (E.D.N.Y. Aug. 26, 2024)**

***McDonald v. Coliseum Med. Ctr. LLC*, 2024 WL 131364 (M.D. Ga. Jan. 11, 2024), *appeal dismissed*, 2024 WL 3407600 (11th Cir. June 10, 2024)**

***Morris v. New York State Dept. of Corr.*, 2024 WL 4252049 (N.D.N.Y. Sept. 20, 2024)**

***Sparrow v. Washington Metro. Area Transit Auth.*, 2024 WL 3551962 (D.D.C. July 26, 2024)**

***Steidle v. United States Liability Insurance Co., Inc.*, 2024 WL 4374110 (E.D. Pa. Aug. 26, 2024)**

***Truitt v. PNK Vicksburg, LLC*, 2024 WL 4045475 (S.D. Miss. Sept. 4, 2024)**

***Westbrook v. Chattanooga Hamilton County Hosp. Auth.*, 2024 WL 4029317 (E.D. Tenn. Sept. 3, 2024)**

ii. Statements

Summarized elsewhere

***Coffman v. Nexstar Media, Inc.*, 2023 WL 7367631 (S.D.W. Va. Nov. 7, 2023)**

***Donithan v. Ohio Dep't of Rehab. & Correction*, 2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

***Mitura v. Finco Servs., Inc.*, 712 F.Supp.3d 442 (S.D.N.Y. 2024)**

2. Articulation of a Legitimate, Nondiscriminatory Reason

***Ayala v. Tasty Baking Company, et al*, 2004 WL 3889089 (E.D. Pa. Aug. 21, 2024)**

Plaintiff started working at defendant's commercial bakery as a machine operator in 2012. In 2019 he sustained a serious work injury, after which he took nearly a year of FMLA leave for surgery and recovery. Plaintiff returned to work in September 2020. In February 2021, plaintiff used FMLA leave again to tend to the needs of his dying son. In the fall of 2021, he took further FMLA leave when his injury worsened and then in April 2022, he again used FMLA leave on an indefinite basis.

Plaintiff was suspended twice in 2021 without pay for three days and was threatened with termination. Defendants stated the reason for the suspensions was verbal arguments and threats to other employees. Both suspensions were overturned, and he was given back pay for the days he was suspended.

Defendants filed a motion for summary judgment for plaintiff's FMLA interference and retaliation claims. The court granted summary judgment on the interference claim as there was no evidence that defendants ever prevented plaintiff from using FMLA leave or that plaintiff was denied any FMLA benefit.

The court also granted summary judgment on plaintiff's FMLA retaliation claim. Although Plaintiff claimed the second suspension was an adverse employment action, because defendants supplied a legitimate non-retaliatory reason, and plaintiff did not rebut it. The court held that the three-day suspensions without pay qualified as an adverse action even though they were later reversed, but the use of threatening language was a legitimate reason for those suspensions. Plaintiff was unable to provide any evidence that the proffered reason was pretext and so failed to meet his burden under the *McDonnell-Douglas* test.

***Bell v. Cactus Wellhead LLC*, 2024 WL 4181800 (W.D. La. Sept. 12, 2024)**

Plaintiff's position was eliminated along with 40 other employees due to a reduction in force due to the COVID-19 shutdowns. Plaintiff was on FMLA leave when he was laid

off. Plaintiff alleged interference and retaliation under the FMLA. Although plaintiff represented himself pro se and did not file a response to defendant's summary judgment motion on those claims, the court nonetheless carefully considered the motion.

The court granted summary judgment for defendant on both claims because, if an employee is laid off during the course of taking FMLA leave, the employer's responsibility to restore the employee to their previous position ceases at the time of the layoff. Similarly, although denying an employee the reinstatement to which he is entitled generally violates the FMLA, denying reinstatement to employee whose right to restored employment had already been extinguished for legitimate reasons unrelated to his efforts to secure FMLA leave does not violate the FMLA. Because defendant presented a legitimate reason for termination, and plaintiff failed to create a genuine issue of material fact as to the proffered reason being pretext, plaintiff's claims under the FMLA failed.

***Chloe v. George Washington Univ.*, 2024 WL 2870891 (D.C. Cir. Jun. 6, 2024)**

Plaintiff filed suit against his university employer, for FMLA retaliation and interference. The Washington, DC district court granted summary judgment for defendant, and plaintiff appealed. The court of appeals affirmed the decision on both FMLA claims. For the retaliation claim, the court agreed that defendant had presented a legitimate, non-retaliatory reason for terminating plaintiff, and plaintiff failed to identify evidence that the reason was pretextual. For the interference claim, the court agreed that the record established that defendant would have terminated plaintiff regardless of his request for or taking of FMLA leave.

***Gargett v. Fla. Dept. of Juvenile Justice*, 2023 WL 8706076 (11th Cir. Dec. 18, 2023)**

Plaintiff appealed the grant of summary judgment for his former employer. His complaint alleged that defendant temporarily transferred him to a different position in retaliation for his exercise of protected conduct, violated his FMLA rights and ultimately fired him because of his age in violation of the ADEA.

Plaintiff worked his way up to a high-ranking position as Director of Detention Services for Central Florida. Within six months of the hiring of a new supervisor, plaintiff became very concerned that the supervisor intended to get him fired. Plaintiff sent her an email requesting she identify any performance issues so he could address them. He requested and met with his supervisor to address any concerns she might have. She did not respond to his inquiries in writing. Afterwards, she began processing his termination on performance and other grounds. The termination was put on hold so that his grievances could be processed. Defendant also became aware of plaintiff's request for FMLA leave for bicep surgery. Defendant granted FMLA leave. He was offered a different position as a consultant. He then requested a second round of FMLA leave for a knee injury and the employer requested additional information. After plaintiff failed to respond by the due date, defendant denied his second FMLA leave request due to separation.

Defendant filed for summary judgment on all claims, including FMLA interference, which the magistrate judge recommended, and the district court adopted. On the FMLA interference claim, the district court held that plaintiff's second request for FMLA leave had no impact on

defendant's prior decision to fire him after plaintiff refused to accept a demotion to another position.

***Hutty v. PNC Bank, N.A.*, 2024 WL 1014080 (D. Md. Mar. 8, 2024)**

The court granted defendant summary judgment on plaintiff's FMLA claim. Plaintiff took FMLA leave from June 26, 2019, to September 18, 2019. Plaintiff alleged her supervisor required to replace Plaintiff after she exhausted her FMLA leave and did not immediately return to work. Plaintiff returned to work in October 2019, and was later fired in November 2019 after the employer alleged she was dishonest about participating in a conference call she failed to join.

The district court grated defendants' summary judgment motion reasoning that there was no FMLA interference because plaintiff returned to her same position after her exhaustion of FMLA leave and there was no retaliation since defendant had proffered a legitimate, nondiscriminatory reason for firing her.

***Kehoe v. Bd. of Trustees of Univ. of Illinois*, 2024 WL 308326 (N.D. Ill. Jan. 26, 2024)**

Plaintiff alleged defendant retaliated against him for exercising his rights under the FMLA. Plaintiff was a police officer with the University of Illinois Chicago Police Department. During his time as a police officer, he was disciplined multiple times for attendance issues including multiple suspensions. After these suspensions he was late for work and claimed to have overslept because of a prescription sleeping pill. Prior to any disciplinary action being taken for this event, plaintiff was hospitalized and requested FMLA leave. Defendant granted plaintiff FMLA leave but terminated plaintiff shortly after his return to work for calling out late the day he was hospitalized and arriving late to work previously that year.

The district court granted summary judgment for defendant. The court reasoned that the basis for plaintiff's termination was not his taking FMLA leave, but rather his repeated tardiness and failure to call-in at least an hour before missing his shift when going to the hospital. The court held that plaintiff failed to establish causation through direct or circumstantial evidence. The court did not consider proof under the indirect method since plaintiff did not offer any argument or evidence in support of that method and even if he were successful on that method, defendant had provided a legitimate, non-discriminatory reason for plaintiff's suspension and termination.

***McDonald v. Coliseum Med. Ctr. LLC*, 2024 WL 131364 (M.D. Ga. Jan. 11, 2024), *appeal dismissed*, 2024 WL 3407600 (11th Cir. June 10, 2024)**

Plaintiff employee sued her former employer alleging FMLA interference and retaliation based on defendant employer's decision to terminate her. The Georgia district court granted defendant's motion for summary judgment because plaintiff failed to properly plead a prima facie case under either theory.

For the retaliation claim, the court held that plaintiff could not establish a prima facie case or establish pretext under the *McDonnell Douglas* burden-shifting framework. While the temporal proximity of her FMLA request and termination was only two days, the court held that alone was insufficient where plaintiff could not rebut several of the employer's legitimate, nondiscriminatory

reasons for termination: failure to attend mandatory meetings, complaints from subordinates and peers about plaintiff's performance; the employer's perception that plaintiff's performance was insufficient; and two instances of insubordination. For the interference claim, the court held that the same facts established that the employer established the affirmative defense that it would have terminated plaintiff regardless of her FMLA request.

***McLaurin v. Georgia Dep't of Nat. Res.*, 739 F.Supp.3d 1254 (N.D. Ga. 2024)**

Plaintiff was a Budget Analyst and Administrative Operations Manager for defendant. Plaintiff worked physically at defendant's office until the COVID-19 pandemic began; she then worked full-time remotely. In August 2020, her supervisor began requesting that she return to in-person work and informed her if she did not return to work in the office, she would need to take FMLA leave. Plaintiff submitted her request for FMLA leave in September 2020 and was approved for intermittent FMLA leave for 12 months. About two months into plaintiff's intermittent leave period, her supervisor changed her leave from intermittent to continuous and asserted that her FMLA leave ended in February 2021. In April 2021, defendant again ordered plaintiff to return to physically working in the office. When she did not return, she was terminated. Plaintiff brought suit against her former employer in state court, alleging retaliation and interference in violation of the FMLA because defendant terminated her during her intermittent FMLA leave. Defendant removed the case to the Northern District of Georgia and moved for summary judgment on both claims.

The court denied summary judgment on plaintiff's retaliation claim. A prima facie case of FMLA retaliation requires that a plaintiff engaged in a statutorily protected activity, suffered an adverse employment action, and that the adverse employment action was causally connected to the protected activity. Defendant argued that it had a separate reason for terminating plaintiff's employment- her refusal to return to working physically in the office. However, because plaintiff alleged that she was still entitled to intermittent FMLA leave when she was terminated, a genuine issue of material fact remained as to whether plaintiff had FMLA protection for her refusal to return.

The court also denied defendant's motion for summary judgment as to plaintiff's interference claim, holding that a genuine issue of material fact remained as to whether defendant would have terminated plaintiff's employment regardless of her taking FMLA leave. To prevail on an interference claim, a plaintiff must show that she was denied a benefit she was entitled to by a preponderance of the evidence, and that she was prejudiced by the violation. If an employer does interfere with a plaintiff's FMLA rights, it can escape liability by showing that it would have interfered with plaintiff's FMLA rights for reasons unrelated to any FMLA leave. Defendant's argument was the same as for the retaliation claim- even if she did not take FMLA leave, it would have terminated plaintiff's employment due to her refusal to return to working physically in the office.

***Ponder v. County of Winnebago*, 702 F. Supp. 3d 709 (N.D. Ill. 2023)**

Plaintiff, an HR director, brought this suit in federal district court against the employer, a county government, and other individuals asserting a claim for FMLA retaliation, among other claims, which arose from her termination. The employer moved for summary judgment.

Plaintiff started as a generalist and was promoted over time to director. In the latter part of plaintiff's employment, defendant hired an outside firm to perform an operational and organizational assessment of the HR and finance departments. The report was initially released to the HR and finance department heads, but not provided to the employer's board until almost a year later. The report was critical of the HR department. Plaintiff continued to request and receive approval for FMLA leave. About a year later, the report was formally presented to and received by the employer's board. About this same time, plaintiff requested FMLA leave, which was granted. Less than a week after the employer received the report, plaintiff's HR head presented the employer with a termination recommendation listing reasons plaintiff had allegedly failed to perform, violated employer policies, and placed the employer at risk of civil liability. Two weeks later, the employer's board voted to terminate plaintiff's employment. The matter was brought back to the employer's board for reconsideration, and the decision to terminate was reaffirmed.

The court denied defendant's motion for summary judgment, holding that plaintiff did not need to prove that retaliation was the only reason for plaintiff's termination; plaintiff could establish an FMLA retaliation claim by showing that the protected conduct was a substantial or motivating factor of the employer's decision. Defendant pointed to the termination memorandum and report in support of its decision. Plaintiff argued pretext, as none of the reasons were brought to her attention, or were issues that originated while plaintiff was on approved FMLA leave. The court noted that the parties disputed whether many of those performance issues were true. Consequently, resolving the FMLA retaliation claim required a jury to weigh competing testimony and determine the credibility of the declarants.

***Ware v. Mercy Health*, 2024 WL 270110 (W.D. Okla., Jan. 24, 2024)**

Plaintiff, an Environmental Services Tech II, brought suit for FMLA interference and retaliation. Plaintiff argued that defendant terminated his employment in retaliation for his use of FMLA leave. Defendant filed a motion for summary judgment. Defendant argued that plaintiff was terminated because he violated its attendance policy on several occasions unrelated to FMLA leave.

The court concluded that plaintiff failed to set forth specific facts showing there is a genuine issue for trial because he had several attendance violations prior to and after his FMLA leave. The court found that defendant's reason for terminating plaintiff after his return from FMLA leave was legitimate and nondiscriminatory based on plaintiff's attendance violations. The court granted defendant's motion for summary judgment.

***Wier v. United Airlines, Inc.*, 2024 WL 1328792 (N.D. Ill. Mar. 28, 2024)**

Plaintiff, a training scheduler for defendant United Airlines, brought suit asserting FMLA interference and retaliation claims. The district court denied the parties' cross motions for summary judgment.

Plaintiff took FMLA leave intermittently for a mental health condition. Defendant investigated Plaintiff's use of FMLA leave and questioned the validity of her certification forms because plaintiff filled out a portion of the certification herself, her psychiatrist's license was expired at the time the certification was signed, and a subsequent certification was identical to

initial certification except for a whited-out and re-written date. After defendant notified plaintiff that her psychiatrist's license was expired, plaintiff submitted a new certification signed by her primary care doctor. During the investigation, the primary care doctor's office confirmed that the doctor had completed the updated certification. Defendant fired plaintiff shortly thereafter, citing fraudulent use of FMLA leave. Plaintiff also submitted evidence that defendant probed the pattern of plaintiff's FMLA use, expressed concern about the impact of her FMLA leave on her colleagues, and suggested that plaintiff should plan ahead when taking FMLA leave to prevent her colleagues' standoffish behavior toward her for taking FMLA leave.

The court held genuine issues of material fact existed as to whether plaintiff was entitled to FMLA leave and whether defendant interfered with her rights. Additionally, disputes of fact existed on plaintiffs' retaliation claim, specifically, whether defendant had an honest suspicion of FMLA misuse and legitimately terminated plaintiff.

Summarized elsewhere

Beard v. Hickman Cnty. Gov't., **2023 WL 878935 (M.D. Tenn. Dec. 19, 2023)**

Benitez v. Valentino U.S.A., Inc., **2024 WL 1347725 (S.D.N.Y. Mar. 29, 2024)**

Blockhus v. United Airlines, Inc., **2024 WL 4234658 (7th Cir. Sept. 19, 2024)**

Clark v. Marceno, **2024 WL 3470293 (M.D. Fla. Jul. 19, 2024)**

Covington v. Union Memorial Hosp., **2024 WL 3784539 (D. Md. Aug. 13, 2024)**

Duncan v. North Broward Hosp. Dist., **2024 WL 962357 (S.D. Fla. 2024)**

Espina v. City of San Antonio, **2024 WL 1335657 (W.D. Tex. 2024)**

Glover v. Hudson Mem. Nursing Home, **2024 WL 759299 (W.D. Ark. Feb. 23, 2024) (W.D. Ark. Feb. 23, 2024)**

Hurlow v. Toyota Motor N. Am., Inc., **2024 WL 689961 (N.D. Ill. Feb. 20, 2024)**

Irvin v. Versatrim, LLC**, 737 F.Supp.3d 297 (E.D.N.C. 2024)**

James v. FedEx Freight, Inc., **2024 WL 3569984 (N.D. Ala. July 29, 2024)**

Lemay v. UCMS, LLC, **2024 WL 2293162 (M.D. Fla. May 21, 2024)**

Neal v. Florida HMA Reg'l Servs., **2024 WL 2784884 (M.D. Fla. May 30, 2024)**

Neron v. Amedisys Holding, LLC**, 2024 WL 1072578 (D. Conn. Mar. 12, 2024)**

Owens v. Dufresne Spencer Group LLC**, 2024 WL 3028470 (N.D. Ill. June 17, 2024)**

Passante v. Cambium Learning Group**, 2024 WL 4171026 (E.D.N.Y. Sept. 12, 2024)**

***Pezza v. Middletown Township Public Schools*, 2023 WL 8254431, (D.N.J. Nov. 29, 2023)**

***Porter v. Jackson Township Hwy. Dept.*, 2024 WL 2188261 (N.D. Ohio May 15, 2024)**

***Richards v. Cmty. Choice Credit Union*, 2024 WL 4361960 (E.D. Mich. Sept. 30, 2024)**

***Sinico v. Commonwealth*, 2024 WL 510521 (3d Cir. Feb. 9, 2024)**

***Small v. Classic Tulsa, C, LLC*, 2024 WL 117349 (N.D. Okla. Jan. 10. 2024)**

***Sparrow v. Washington Metro. Area Transit Auth.*, 2024 WL 3551962 (D.D.C. July 26, 2024)**

***Spatafore v. City of Clarksburg*, 2024 WL 4280959 (N.D.W. Va. Sept. 23, 2024)**

***Walker v. Se. Pa. Transp. Auth.*, 2024 WL 3069816 (E.D. Pa., June 20, 2024)**

***Ward v. Cobb Cnty. School Dist.*, 2024 WL 3913883 (N.D. Ga., July 15, 2024)**

***Ward v. Cobb Cnty. School Dist.*, 2024 WL 3913883, at *1 (N.D. Ga. July 15, 2024)**

3. Pretext

***Kelley v. Jewish Voice Ministries Int'l*, 2024 WL 4416978 (D. Ariz. Oct. 4, 2024)**

Plaintiff, a supervisory television producer for defendant television company, had a stroke and required FMLA leave for her recovery time. While on FMLA leave, plaintiff performed occasional work and then, upon her ramped up return to work, was told that her position was being changed, and she was to be an "inactive" employee until she could have a full return to work. Three months later, plaintiff was terminated while still designated an inactive employee. Plaintiff sued defendant in Arizona district court for FMLA retaliation and interference.

Defendant moved for summary judgment which was denied. The court reasoned that plaintiff's retaliation claim survived summary judgment because there were questions regarding whether defendant revised her position description and designated her as inactive because she took FMLA leave, and whether defendant's reasoning for the change was pretext. The court also denied summary judgment on plaintiff's interference claim because there was a material factual question as to whether the amount of work plaintiff did while on leave exceeded the *de minimis* standard.

***Key v. City of Detroit*, 732 F.Supp.3d 721 (E.D. Mich.2024)**

Plaintiff was terminated after receiving approval for intermittent FMLA leave then, allegedly walking away from the job and failing to return or respond to a letter allegedly sent by his employer seeking additional information from plaintiff.

Plaintiff had filed suit alleging retaliation for exercise of his rights under the FMLA. In reviewing the magistrate's report, the district court found that plaintiff's testimony that he never received correspondence seeking additional information and that he had complied with all known requirements for FMLA leave to be sufficient to raise a genuine issue of material fact on the issue of pretext thus requiring a jury trial.

***Kirkendall v. Boone Cnty. Bd. of Educ.*, 2024 WL 966239 (E.D. Ky. Mar. 6, 2024)**

Plaintiff, a former teacher and athletic director for defendant, filed suit alleging FMLA interference and retaliation. Defendant moved for summary judgment on both claims. In denying defendant's motion on plaintiff's interference claim, the district court found plaintiff's deposition testimony that defendant discouraged him from taking leave sufficient to allow the interference claim to continue.

Defendant was granted summary judgment on plaintiff's retaliation claim. While plaintiff offered some evidence that defendant's termination decision stemmed from a retaliatory motive, plaintiff could point to no facts that defendant's proffered reason for his termination, here insubordination because plaintiff refused comply with the employer's requirement that he work an earlier shift, was pretext. The district court held that to rebut the proffered rationale, the weight of the evidence offered by plaintiff must make it more likely than not that the explanation is pretextual. Plaintiffs' only proffered evidence towards pretext was his belief that the earlier shift start time did not make sense. On these facts, summary judgment was granted on plaintiffs' retaliation claim.

***Lands v. City of Raleigh*, 2024 WL 476869 (E.D.N.C. Feb. 7, 2024)**

Plaintiff, a former employee of the Raleigh Police Department, requested and was granted FMLA leave from September of 2017 to February of 2018 and used additional leave until December of 2018. In July of 2019, the Police Department investigated a complaint against plaintiff that he engaged in unscrupulous business practices while working for his father's construction company between September and December 2018. After the investigation found violations of internal policies, plaintiff's employment was terminated.

Plaintiff brought a claim of FMLA retaliation, and defendant moved for summary judgment. In ruling for defendant, the Eastern District of North Carolina found that even if plaintiff established a causal connection between using FMLA leave and the investigation (which occurred 18 months apart), plaintiff failed to rebut the legitimate basis for his termination. Specifically, plaintiff brought forth no evidence that defendant did not honestly believe that his conduct violated its policies, and failed to identify any inconsistencies, contradictions, or post-hoc rationalization by defendant regarding its basis for his termination.

***Lutz v. Mario Sinacola & Sons Excavating Inc.*, 2024 WL 666071 (N.D. Tex. Feb. 16, 2024)**

Plaintiff brought claims against her employer under multiple statutes, and the parties filed cross motions for summary judgment as to the FMLA claims. Plaintiff took approved FMLA leave to recover from hip replacement surgery, during which time defendant conducted a reduction-in-force due to a decline in business resulting from the COVID-19 pandemic. Plaintiff's position was included in that RIF, and she was notified of her termination while on FMLA leave. Plaintiff produced no evidence of pretext for her termination, and the trial court granted summary judgment to defendant.

***Royles v. TriHealth, Inc.*, 2024 WL 3926226 (S.D. Ohio Aug. 22, 2024)**

Plaintiff was a registered nurse who formerly worked at defendant's hospital. Plaintiff brought suit against defendant for FMLA retaliation, alleging that she was terminated because she took FMLA leave. The court granted defendant's motion for summary judgment, assuming that plaintiff had proven her *prima facie* case of retaliation and finding that defendant satisfied its burden of showing a legitimate, nondiscriminatory reason for plaintiff's termination. In granting summary judgment for defendant, the court held that plaintiff could not establish pretext.

Plaintiff argued that defendant's proffered reason for her termination was insufficient because other employees engaged in similar conduct as plaintiff but were not similarly disciplined. The court disagreed, finding that there was no evidence that the other employees' conduct was similar in severity to plaintiff's, and plaintiff had no knowledge of whether the other employees were actually disciplined or not. Plaintiff's assumption that the other employees were not disciplined was insufficient to show pretext.

***Siefert v. Liberty Twp.*, 2024 WL 4100897 (6th Cir. Sept. 6, 2024)**

Plaintiff appeals the grant of summary judgment on his FMLA interference claim. Plaintiff worked for defendant Township until his termination, which occurred while plaintiff was still hospitalized for a mental health crisis that coincided with plaintiff's performance and misconduct at work. The Court of Appeals agreed plaintiff had established a prima facie case of interference but that he failed to show defendant's reasons for termination were pretextual. The court suggested three possible ways to demonstrate pretext by showing the reason (1) has no basis in fact; (2) did not actually motivate the employer; or (3) was insufficient to warrant the action. To show the stated reason for termination did not actually motivate the employer, plaintiff offered temporal proximity between his mental health crisis and his termination; deposition testimony from a non-decisionmaker that plaintiff may not have been fired but for his mental health issues; and hearsay evidence offered by plaintiff's wife that defendant felt plaintiff was unsafe. The Court of Appeals rejected plaintiff's proffered evidence of temporal proximity alone, rumors and subjective beliefs, and inadmissible hearsay insufficient to demonstrate a triable issue on pretext.

***Spatafore v. City of Clarksburg*, 2024 WL 4280959 (N.D.W. Va. Sept. 23, 2024)**

Plaintiff sued her employer, the City of Clarksburg, for FMLA retaliation related to defendant's termination of plaintiff's employment for alleged insubordination, insolence, and unsolicited distribution of internal documents. The court granted defendant's motion for summary judgment because it found that plaintiff failed to show that the City's proffered legitimate reason for the termination was pretextual. Assuming without deciding that plaintiff had established a prima facie case of retaliation, the court concluded that defendant had presented sufficient evidence to support termination because plaintiff had posted an internal personnel memo on Facebook twice with comments and ignored the grievance procedure by raising complaints with officials above her direct supervisor, such as the mayor and city council. The court also rejected plaintiff's temporal proximity argument because there was five months between plaintiff's FMLA request and her discharge (and three months between her return to work and her discharge). Finally, the court discounted plaintiff's proffered comparators because they were not similarly

situated, as they did not engage in the same conduct as plaintiff, had different supervisors, and were subject to different standards as union and civil service employees.

***Ward v. Cobb Cnty. School Dist.*, 2024 WL 3913883 (N.D. Ga., July 15, 2024)**

Plaintiff employee brought suit alleging defendant employer, Cobb County School District, retaliated against her in violation of the FMLA. Plaintiff alleged that her employment contract was not renewed because she requested and was approved for FMLA leave to take care for her spouse and/or filed an FMLA related complaint. Following discovery, defendant moved for summary judgment and to exclude the testimony of plaintiff's damages expert.

First, the court held that plaintiff created a rebuttable presumption in her favor to make out a *prima facie* case of retaliation. Next, defendant presented evidence that its decision to not renew plaintiff's contract was based on perceived deficits in communication and professionalism. The court held that plaintiff failed to demonstrate that defendant's justification was pretextual because she failed to present the type of weakness, implausibility, inconsistency, incoherency, or contradiction necessary to raise a triable issue. Thus, plaintiff could not show both that defendant's explanation was false, and that retaliation was the real reason, even though the timing of her FMLA leave and decision to not renew her contract were close together. The court therefore recommended granting defendant's motion for summary judgment, refer the case to court-sponsored mediation, and stayed defendant's motion to exclude pending the outcome of mediation.

***Ward v. Cobb Cnty. School Dist.*, 2024 WL 3913883, at *1 (N.D. Ga. July 15, 2024)**

Plaintiff employee, DeRhonda Ward, brought suit alleging defendant employer, Cobb County School District, retaliated against her in violation of the FMLA. Plaintiff alleged that her employment contract was not renewed because she requested and was approved for FMLA leave to take care for her spouse and/or filed an FMLA-13 related complaint. Following discovery, defendant moved for summary judgment and to exclude the testimony of plaintiff's damages expert.

First, the court held that plaintiff created a rebuttable presumption in her favor to make out a prima facie case of retaliation. Next, defendant presented evidence that its decision to not renew plaintiff's contract was based on perceived deficits in communication and professionalism. The court held that plaintiff failed to demonstrate that defendant's justification was pretextual, presenting the type of weakness, implausibility, inconsistency, incoherency, or contradiction necessary to raise a triable issue. Meaning that plaintiff could not show both that defendant's explanation was false and that retaliation was the real reason, even though the timing of her FMLA leave and decision to not renew her contract were close together. The court therefore recommended granting defendant's motion for summary judgment, refer the case to court-sponsored mediation, and stay defendant's motion to exclude pending the outcome of mediation.

Summarized elsewhere

***Bomar v. Bd. of Educ. Of Harford Cty.*, 2024 WL 4108530 (D. Md. Sept. 6, 2024)**

***Bell v. Cactus Wellhead LLC*, 2024 WL 4181800 (W.D. La. Sept. 12, 2024)**

Ayala v. Tasty Baking Company, et al, **2004 WL 3889089 (E.D. Pa. Aug. 21, 2024)**

Cerda v. Blue Cube Operations, L.L.C., **95 F.4th 996 (5th Cir. 2024)**

Clark v. Marceno, **2024 WL 3470293 (M.D. Fla. Jul. 19, 2024)**

Duncan v. North Broward Hosp. Dist., **2024 WL 962357 (S.D. Fla. 2024)**

Farmer v. FilmTec Corp.**, 2024 WL 4239552 (D. Minn. Sept. 19, 2024)**

Fenton v. Dollar Tree Stores, Inc.**, 2024 WL 4372310 (M.D. Pa. Oct. 2, 2024)**

Foster v. Credit One Bank, N.A.**, 2024 WL 4625291 (9th Cir. Oct. 30, 2024)**

Fowler v. District of Columbia, **2024 WL 4345813 (D.D.C. Sept. 30, 2024)**

Green v. Martin Marietta Materials, Inc.**, 2024 WL 3219185 (D.S.C. June 27, 2024)**

Gunter v City of Omaha**, 2023 WL 9375620 (D. Neb. Dec. 20, 2023)**

Knapp v. Thompson Grp., Inc.**, 2023 WL 8810785 (E.D. Pa. Dec. 19, 2023)**

Lapham v. Walgreen Co.**, 88 F.4th 879 (11th Cir. 2023)**

Leach v. Specialty Hosp., LLC, **2023 WL 8719439 (E.D. Tex. Dec. 18, 2023)**

Neal v. Florida HMA Reg'l Servs.**, 2024 WL 2784884 (M.D. Fla. May 30, 2024)**

Persons v. Pulaski County, **2023 WL 8877941 (E.D. Ark. Dec. 22, 2023)**

Ponder v. County of Winnebago, **702 F. Supp. 3d 709 (N.D. Ill. 2023)**

Richardson v. Hapag-Lloyd (Am.), LLC**, 2023 WL 9316875 (N.D. Ga. Nov. 29, 2023), report and recommendation adopted in part, rejected in part, 2024 WL 1377649 (N.D. Ga. Mar. 31, 2024)**

Rose v. Eagle Express Lines, Inc.**, 2023 WL 7327437 (E.D. Pa. Nov. 7, 2023)**

Stratton v. Bentley Univ.**, 113 F.4th 25 (1st Cir. 2024)**

Tucker v. Concrete**, 2024 WL 1485992 (D.N.J. Apr. 5, 2024)**

Wier v. United Airlines, Inc.**, 2024 WL 1328792 (N.D. Ill. Mar. 28, 2024)**

Wilkins v. Engineered Plastic Components, Inc.**, 2024 WL 2965592 (N.D. Ala. June 12, 2024)**

Woodard v. Cmty. Health Centers Inc.**, 2024 WL 3641399 (W.D. Okla. Aug. 2, 2024)**

a. Timing

***Wright v. Hertford Cnty. Bd. of Educ.*, 2024 WL 85926 (E.D.N.C. Jan. 8, 2024)**

The assistant principal at defendant employer's middle school brought an action against the Board of Education, the Superintendent and the Principal of his school alleging retaliation under the FMLA. A District Court in the Eastern District of North Carolina denied defendant's motion to dismiss for failure to state a claim upon which relief could be granted as to plaintiff's FMLA retaliation claim because plaintiff was able to establish a causal relationship between his FMLA leave related to his heart condition and a suspension without pay that followed shortly thereafter.

Summarized elsewhere

***Franco v. American Airlines, Inc.*, 2024 WL 4524614 (S.D.N.Y. Oct. 18, 2024)**

***Glynn v. Village Practice Mgmt. Co., Inc.*, 2024 WL 1886924 (N.D. Ill. Apr. 30, 2024)**

***Landolfi v. Town of North Haven*, 2024 WL 3925332 (D. Conn. Aug. 23, 2024)**

***Passante v. Cambium Learning Group*, 2024 WL 4171026 (E.D.N.Y. Sept. 12, 2024)**

***Phillips v. Jackson Public School Dist.*, 2023 WL 7414484 (S.D. Miss. Nov. 9, 2023)**

***Spatafore v. City of Clarksburg*, 2024 WL 4280959 (N.D.W. Va. Sept. 23, 2024)**

***Ward v. Cobb Cnty. School Dist.*, 2024 WL 3913883 (N.D. Ga., July 15, 2024)**

***Ward v. Cobb Cnty. School Dist.*, 2024 WL 3913883, at *1 (N.D. Ga. July 15, 2024)**

***Wiberg v. Pixelle Specialty Solutions, LLC*, 2024 WL 1250423 (W.D. Wis. Mar. 22, 2024)**

b. Statements and Stray Remarks

Summarized elsewhere

***Richards v. Cmty. Choice Credit Union*, 2024 WL 4361960 (E.D. Mich. Sept. 30, 2024)**

***Rogers v. City of Greensboro ABC Bd.*, 2024 WL 3535420 (M.D.N.C. July 24, 2024)**

4. Comparative Treatment

Summarized elsewhere

***Spatafore v. City of Clarksburg*, 2024 WL 4280959 (N.D.W. Va. Sept. 23, 2024)**

C. Mixed Motive

***Wood v. Kansas City S. Ry. Co.*, 2024 WL 4417376 (W.D. La. Oct. 3, 2024)**

Plaintiff brought FMLA retaliation and interference claims against defendant. Defendant moved for summary judgment. On the retaliation claim, the court began its analysis by noting the Fifth Circuit's holding that the mixed-motive framework applies to FMLA claims in which retaliatory animus was a motivating factor in an adverse employment action. To avoid liability, an employer must show that the retaliation was not the but-for cause of its action. Under the first step of the mixed-motive analysis, plaintiff must establish a prima facie case of FMLA retaliation. Defendant argued that plaintiff could not do this because he was not protected under the FMLA. In response, plaintiff argued that defendant was equitably estopped from asserting a non-coverage defense because defendant had contended that plaintiff had "exhausted" his FMLA leave. Since nothing in the record before the court established that plaintiff had detrimentally relied on the representations that he had "exhausted" his FMLA leave, the court determined that plaintiff could not establish equitable estoppel and that defendant was entitled to summary judgment on the FMLA retaliation claim.

Regarding the interference claim, the court noted that plaintiff must show that he was prejudiced by the interference with his FMLA rights. Given that plaintiff had been placed on a medical leave of absence rather than FMLA leave, the court determined that plaintiff could not establish that he was prejudiced by any alleged interference. Plaintiff had received all requested time off and was not entitled to job restoration because he was not returning from FMLA leave. The court granted defendant's motion for summary judgment on plaintiff's interference claim.

Summarized elsewhere

***Marrero v. Amazon.com Servs. LLC*, 2024 WL 216280 (S.D. Fla. Jan. 19, 2024)**

D. Pattern of Practice

CHAPTER 11.

ENFORCEMENT, REMEDIES, AND OTHER LITIGATION ISSUES

I. Overview

II. Enforcement Alternatives

A. Civil Actions

1. Who Can Bring a Civil Action

***Kyi v. 4C Food Corp.*, 2024 WL 3028954 (E.D.N.Y. June 17, 2024)**

Plaintiff, the wife of deceased employee, sued her husband's employer and the Teamsters Welfare Fund for various issues, including FMLA interference related to her husband's use of FMLA at the end of his employment. The court granted both defendants' motions to dismiss the FMLA interference claims for different reasons. The claim against the welfare fund was dismissed on standing grounds, because the welfare fund was dissolved before the claim was brought; thus,

even if plaintiff received a favorable decision there would be no redress. The claim against the employer was dismissed because plaintiff herself was not an employee, and even assuming a spouse or beneficiary could bring such a claim, the maximum amount of FMLA leave (12 weeks) was granted. Therefore, the covered employee was not denied the benefits to which he was entitled under the FMLA.

***Stockslager v. D.C. Nat'l Guard*, 703 F. Supp. 3d 695 (D. Md. 2023)**

Plaintiff, a "dual status military technician" employed by defendant, DC National Guard, brought suit alleging that his termination violated the FMLA. Defendant moved for dismissal arguing that plaintiff's claim was barred by sovereign immunity because plaintiff was a federal employee under the FMLA and the FMLA does not grant federal employees a private right of action. In evaluating defendant's motion to dismiss, the district court noted that federal employees are not "eligible employees" under Title I of the FMLA, which provides the private right of action, and are only covered by Title II. The district court then looked to Title 10 of the United States Code and a recent Supreme Court decision, *Ohio Adjutant General's Dep't v. Federal Labor Relations Authority*, 598 U.S. 449 (2023), to specify that dual status military technicians employed by state national guards are generally considered to be federal employees. The district court thereby evaluated the facts of plaintiff's former position as a dual status military technician with the specific statutory language of the FMLA and concluded that plaintiff was a federal employee who excluded from the definition of "eligible employee." Since plaintiff was thus only covered by Title II of the FMLA, he had no private right of action, and the district court dismissed accordingly.

a. Secretary

b. Employees

c. Class Actions

***Roberson v. Kansas City S. Ry. Co.*, 2024 WL 4502281 (W.D. Mo. Oct. 16, 2024)**

After class and merits discovery concluded, plaintiffs brought a motion for class certification under Rule 23, asking the court to certify a putative class of current, former, and future employees subject to the FMLA policies of their employer, Kansas City Southern Railway Co.'s ("KCS"). Plaintiffs argued that whether KCS's FMLA leave calculation policy violated the FMLA is a question common to the entire class. The employer countered that the class includes some employees who were never subject to the FMLA leave calculation policy at issue. The court accepted this argument and ruled against commonality because the employer's FMLA leave calculation policy never applied to employees who left KCS's employment prior to its implementation, yet these employees would be included in plaintiffs' proposed class.

Plaintiff's second claim alleged FMLA discrimination based on KCS's policy of moving employees to the bottom of job boards after returning from FMLA leave, rather than returning them to the position they were in at the time they took leave ("bottom-of-the board policy"). Plaintiff asserted the employer's bottom-of-the-board policy was a common question for the class of current, future and past employees. The employer argued against commonality by pointing out that the policy did not apply to employees who worked fixed schedules, and it is too speculative

that all employees on a fixed schedule will at some point work on call, so the risk of substantial harm to all class members is low or nonexistent. The court found the employer's argument persuasive and refused to certify a class based on employer's bottom-of-the-board policy because the proposed class consisted of employees who faced no realistic threat that the employer would violate their FMLA rights, specifically, former employees. Likewise, the court rejected plaintiff's invitation to create subclasses *sua sponte*.

***Weinberg v. Twitter, Inc.*, 2024 WL 3908112 (N.D. Cal. Aug. 21, 2024)**

Plaintiffs are former employees of defendant and its co-defendant and successor, X Corp., who were subjects of a mass layoff.

Plaintiffs asserted class claims on behalf of the laid off employees. For the FMLA aspect of the case, the class claims were for all laid off employees who had recently taken or were about to take FMLA leave. Defendants moved to dismiss the putative FMLA class claims, raising two arguments: (1) that the class definition lacked sufficient certainty and (2) that the named plaintiff on the FMLA claim lacked standing.

The court found that the issues would not be resolved at the motion to dismiss phase, where no discovery had taken place. First, defendants' argument that the class definition was too indefinite could be resolved at the class certification phase. Second, the court found that while defendants asserted that plaintiff lacked standing, defendants were, in fact, arguing that plaintiff was not sufficiently similarly situated to other class members to bring claims on the other class members' behalf. Thus, defendants were challenging Rule 23 prerequisites, not Article III standing. The court denied defendants' motion.

2. Possible Defendants

***Davis v. El Paso Cnty.*, 2023 WL 7930199 (W.D. Tex. Nov. 16, 2023)**

Plaintiff notified her superiors at defendant of her son's terminal illness and her need to take FMLA leave to care for him. Defendant denied her request. Plaintiff claims that defendant then left her no choice but to resign her position. She then brought suit alleging violations of the FMLA by both defendant county and defendant emergency health network. The county defendant moved to dismiss for failure to state a claim under Rule 12(b)(6).

The district court for the Western District of Texas granted defendant's motion to dismiss, holding that the county defendant was not plaintiff's employer under the FMLA. Under the FMLA the courts consider whether the alleged employer (1) has the power to hire and fire the employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. The court reasoned that here, plaintiff did not allege that the county had any control over whether she could take FMLA leave. Nor did she allege that the county supervised her day-to-day duties or activities.

***Johnson v. Town of Smithfield*, 2024 WL 1336466 (E.D.N.C. Mar. 28, 2024)**

In this case plaintiff alleged 15 different counts against 21 different defendants, including the Town of Smithfield. Plaintiff alleged, among other things, FMLA interference and retaliation.

While the court noted that under certain circumstances individuals may be held liable as an employer under the FMLA, plaintiffs' FMLA interference and retaliation claims against the individual defendants failed because he failed to plausibly allege facts demonstrating that they were his employers. The court also dismissed plaintiff's claim that defendants' refusal to give him paid leave violated the FMLA because the FMLA does not confer a right to paid leave.

However, the court denied defendants' motion to dismiss the FMLA interference claim against the Town, reasoning that plaintiff plausibly alleged that while on FMLA leave, defendant required daily contact and an unanticipated in-person meeting. For the same reasons, the retaliation claim against the Town survived a motion to dismiss

Summarized elsewhere

***Crawford v. Bronx Comm. Coll.*, 2024 WL 3898361 (S.D.N.Y. Aug. 21, 2024)**

Chan v. Dept. of Human Servs., 2024 WL 3597199 (D. Md. July 31, 2024)

***Kyi v. 4C Food Corp.*, 2024 WL 3028954 (E.D.N.Y. June 17, 2024)**

***Mattern v. PKF O'Connor Davies*, 2024 WL 3937751 (E.D.N.Y. Aug. 26, 2024)**

***Roberson v. Kansas City S. Ry. Co.*, 2024 WL 4502281 (W.D. Mo. Oct. 16, 2024)**

***Thurston v. W. All. Bank*, 2024 WL 961433 (D. Ariz. Mar. 6, 2024)**

***Walls v. Miller Edge, Inc.*, 2024 WL 1836499 (E.D. Pa. Apr. 26, 2024)**

***Wayne v. Superior Air-Ground Ambulance Service, Inc.*, 2023 WL 6213579 (N.D. Ind. Sept. 22, 2023)**

3. Jurisdiction

***Domenichello v. Tidal Basin Gov't Consulting, LLC*, 2024 WL 3274725 (D.N.H. July 2, 2024)**

Plaintiff, a project manager working in emergency disaster relief consulting, sued defendants in a New Hampshire District Court for FMLA interference and retaliation. Plaintiff, who lived in New Hampshire, worked remotely for the out-of-state defendant companies, whom he alleged were all "related" entities and his joint employers. Plaintiff alleged that his termination, which came on the same day that he had submitted documentation in support of a request for a 2-6 week leave of absence for rotator cuff surgery, was retaliatory and unlawfully interfered with his rights under the FMLA.

Defendants moved to dismiss plaintiff's complaint for lack of personal jurisdiction and failure to state a claim. The district court in New Hampshire ruled that two of defendants had consented to personal jurisdiction in New Hampshire by registering agents to receive service in the state. As to the remaining two defendants, the court held they did not possess sufficient minimum contacts with New Hampshire to establish personal jurisdiction. Plaintiff argued that those defendants have two contacts with New Hampshire: (1) their facilitation of his remote work

from New Hampshire and their ultimate termination of his employment, which was received by him in New Hampshire; and (2) the business ties between another defendant and New Hampshire. In rejecting that argument, the court first noted that the allegations and evidence that those defendants employed plaintiff were thin at best, and plaintiff made no effort to satisfy any standard under which the court may pierce the corporate veil in the personal jurisdiction context. The court then held that a nonresident defendant's employment of a remote worker in the forum state is not, own its own, sufficient to show purposeful availment and plaintiff did not plead any additional facts such as a requirement to work remotely in the forum state, the maintenance of offices in the forum state, the possession of property in the forum state, or employment of employees other than plaintiff in the forum state. Finally, the court held that the business ties of the other defendants in New Hampshire were not contacts as to these defendants because the evidence submitted by plaintiff about those business ties did not reference them.

Of the two remaining defendants that consented to personal jurisdiction, only one raised a failure to state a claim argument with respect to the FMLA claims, arguing that it was not plaintiff's employer. The district court granted the motion to dismiss, noting that plaintiff had not made a substantive attempt to brief either the integrated employer test or the joint employer test, waiving those issues, and that the bare allegation that defendant was "affiliated" with plaintiff's employer was insufficient to state a claim

***Aguilar-Vaz v. Lantern Hill, Inc.*, 2024 WL 1928453 (D.N.J. Apr. 30, 2024)**

Plaintiff brought a lawsuit against defendant in the Superior Court of New Jersey, Law Division, Union County alleging violations of the FMLA and New Jersey state law. The FMLA claim alleged defendant violated her rights under the FMLA and retaliated against her when she exercised those rights. Defendant removed the case to the United States District Court of New Jersey under 28 U.S.C. § 1441. Plaintiff filed a Motion to Remand the case to New Jersey state court.

The court rejected plaintiff's Motion to Remand. Plaintiff argued that the federal court does not have jurisdiction over this case because there is no diversity between the parties and that since the FMLA is only mentioned as context for violations of the New Jersey law, no federal question is raised. However, the court distinguished this case from previous cases in which courts found that a federal question was not presented on the grounds that plaintiff based a cause of action on a violation of the FMLA, which plaintiffs in the other cases did not do. The court concluded that the assertion of an FMLA cause of action is sufficient to grant subject matter jurisdiction.

B. Arbitration

***Trout v. Univ. of Cincinnati Med. Ctr., LLC*, 2024 WL 3622834 (S.D. Ohio Aug. 1, 2024)**

Plaintiff, a nurse clinician, sued employer, a medical center, for in part, FMLA interference. The employer enforced an arbitration agreement and attempted to shorten the statute of limitations period for the FMLA claim. The arbitrator declined to shorten the FMLA period, and then plaintiff refiled her FMLA claim in court. The district court agreed with the arbitrator that an FMLA claims statutory period could not be shortened by a contractual provision as the statutory time limits prevail in that situation.

1. Introduction

2. Individual or Employer-Promulgated Arbitration Agreements and Plans

***Taylor v. CDS Advantage Sols.*, 2024 WL 1048124 (D.N.J. Mar. 9, 2024), *reconsideration denied*, 2024 WL 1635686 (D.N.J. Apr. 16, 2024)**

Plaintiff sued his former supervisor and former employer *pro se* for violations of the ADA and the FMLA. Initially, the district court judge denied defendant's Motion to Compel Arbitration as plaintiff had created a material factual dispute when he alleged that he had never received a copy of the arbitration agreement and thus could not have accepted its terms by his conduct. Defendant appealed the district court's decision arguing that the common law mailbox rule created a presumption of receipt that plaintiff could not have overcome, but before the Third Circuit could rule on the appeal, plaintiff presented the original copy of the arbitration agreement mailed to him. The appeal was dismissed, and defendant filed a motion to renew its Motion to Compel Arbitration. The district court permitted the renewed motion and then granted the renewed motion finding that the arbitration agreement was valid and enforceable, plaintiff had received the arbitration agreement with an opportunity to opt-out, did not opt out, and continued his employment with defendant. Plaintiff has appealed to the Third Circuit which has permitted him to proceed *in forma pauperis*.

***Tiedeman v. EyeOne P.L.C.*, 2024 WL 2059085 (W.D. Va. May 8, 2024)**

Plaintiff, an ophthalmologist, filed a Petition to Compel Arbitration against his former employer for several statutory claims, including interference and retaliation under the FMLA, in accordance with his Employment Agreement with defendant. Defendant filed a Fed. R. Civ. Pro. 12(b)(6) motion to dismiss the Petition to Compel Arbitration, arguing that the claims fell outside the scope of the arbitration agreement.

Although the district court acknowledged the federal policy favoring arbitration when resolving the scope of arbitrable issues in a contract, it found that the circuit split on language similar to that used in the Employment Agreement and the Employment Agreement's discussion of unrelated disputes which might arise between the parties weighed in favor of plaintiff's claims falling outside the scope of the arbitration agreement. The district court thus dismissed plaintiff's Petition to Compel Arbitration.

3. Arbitration Under a Collective Bargaining Agreement

Summarized elsewhere

***Bell v. CSX Transportation, Inc.*, 733 F.Supp.3d 385 (D. Md. 2024)**

III. Remedies

A. Damages

Summarized elsewhere

***Webb v. Playmonster, LLC*, 2024 WL 1675062 (W.D. Wis. April 18, 2024)**

1. Denied or Lost Compensation

2. Actual Monetary Losses

***Buhmann v. Sch. Bd. of Polk Cnty., Fla.*, 2024 WL 2111846 (M.D. Fla. May 10, 2024)**

Plaintiff alleged an FMLA interference claim, asserting that defendant improperly denied her request for FMLA leave. The district court granted defendant's unopposed motion for summary judgment, ruling that plaintiff did not suffer any monetary damages due to the denial of her FMLA leave. The court noted that plaintiff received equivalent treatment as she would have under the FMLA. Specifically, she was granted the same twelve weeks of unpaid leave with her group insurance maintained, and she was reinstated to her same position following her medical leave. Since the alleged technical violation of the FMLA did not result in any monetary damage to plaintiff, the court concluded that her claim failed as a matter of law.

Summarized elsewhere

***Gonzales v New Mexico Department of Health*, 2024 WL 869153 (D. N.M. Feb. 29, 2024)**

3. Interest

***Ramadei v. Radiall USA, Inc.*, 2024 WL 4198326 (D. Conn. Sept. 16, 2024)**

In a post-trial motion, plaintiff moved for liquidated damages, front pay or reinstatement, pre- and post-judgment interest, and attorneys' fees and costs after prevailing in a jury trial on his FMLA retaliation claim. The jury awarded damages for lost wages, salary and employment benefits. On an advisory basis, the jury found that the employer had a good faith belief plaintiff's termination was not in violation of the FMLA. First, the court awarded prejudgment interest to plaintiff, citing the mandatory grant of pre-judgment interest under 29 U.S.C. § 2617(a)(1)(A)(ii). To determine the amount of prejudgment interest to award, plaintiff argued that the court should multiply the jury award by the weekly average 1-year constant maturity Treasury yield for the calendar week preceding the date of judgment, as prescribed by 28 U.S.C. § 1961(a), and then, triple that amount for the approximately three years that wages were withheld from the effective date of his termination to the date of the jury verdict. The court accepted this argument for post-judgment interest, but rejected the argument for prejudgment interest, noting that it is ill suited for approximating the interest the employer collected by virtue of retaining back wages, because the applicable average 1-year constant maturity will vary across the time between the date of termination and the date judgment is entered. Rather, the court used a weekly rolling average for the Treasury rate to calculate the post-judgment interest during the applicable time period. The court also rejected plaintiff's interest calculation because it was calculated by tripling the interest on the back pay award, noting that method of calculation assumes that the entire back pay award was due from the date of termination until the jury's verdict. The court determined that the better

calculation of interest as it becomes due requires applying the relevant rate to a pro rata portion of the back pay award.

The court also considered plaintiff's motion for liquidated damages, borrowing the FLSA standard for liquidated damages, determining that the employer must show that it took honest and reasonable steps to determine what the FMLA required of it, and acted in compliance with those requirements. Defendant argued that its good faith was evident from (1) its consistent efforts to comply with the FMLA, and (2) that it eliminated plaintiff's position for purely financial reasons. The court rejected these arguments because the employer's general efforts to comply with the FMLA did not establish that it made similar effort in plaintiff's case, and, although the position had been identified for potential elimination for some time, the plan to eliminate it was not set in motion until plaintiff was on leave. Therefore, the court found that the employer did not meet its burden to show that it acted in good faith and reasonably believed that it was not violating plaintiff's FMLA rights when it terminated his employment, and liquidated damages were awarded.

Summarized elsewhere

***McClinton v. Cogency Glob., Inc.*, 2024 WL 1329777 (N.D. Ala. Mar. 27, 2024)**

***Waller v. The Salvation Army*, 2024 WL 3939568 (N.D. Tex. Aug. 26, 2024)**

4. Liquidated Damages

***McClinton v. Cogency Glob., Inc.*, 2024 WL 1329777 (N.D. Ala. Mar. 27, 2024)**

Plaintiff employee sued his former employer alleging FMLA interference and retaliation, among other claims. After trial, the jury returned a verdict in favor of plaintiff on the FMLA interference claim and a verdict in favor of defendant on the FMLA retaliation claim. On post-trial motions, the Alabama district court upheld the jury's verdicts, reduced part of the damages awarded to plaintiff, and granted plaintiff's motion for prejudgment interest on damages, liquidated damages, and attorney's fees and costs.

The jury awarded damages under the FMLA, which the court upheld. The court granted plaintiff's motion for reinstatement because plaintiff's supervisor with which he had conflict was no longer employed by defendant, even though defendant alleged that its relationship with plaintiff was damaged beyond repair. The court also granted liquidated damages on top of the damages and interest under the statute, holding that defendant did not establish that it acted in good faith when it failed to notify plaintiff of his FMLA rights, which led to the verdict on the interference claim. This case is currently on appeal.

Summarized elsewhere

***Ramadei v. Radiall USA, Inc.*, 2024 WL 4198326 (D. Conn. Sept. 16, 2024)**

a. Award

b. Calculation

5. Other Damages

B. Equitable Relief

1. Equitable Relief Available in Actions by the Secretary

2. Equitable Relief Available in all Actions

a. Reinstatement

Summarized elsewhere

***Anderson v. Lawrence Hall Youth Servs.*, 2024 WL 1342586 (7th Cir. Mar. 29, 2024)**

Bunnell v. William Beaumont Hosp., WL 4235469 (E.D. Mich. Sept. 19, 2024)

***Lloyd v. Twin Cedars Youth & Fam. Servs., Inc.*, 2024 WL 247066 (M.D. Ga. Jan. 23, 2024)**

***McClinton v. Cogency Glob., Inc.*, 2024 WL 1329777 (N.D. Ala. Mar. 27, 2024)**

b. Front Pay

c. Other Equitable Relief

***Taranto-King v. AdaptHealth, LLC*, 2023 WL 8452052 (M.D. Fla. Dec. 6, 2023)**

Plaintiff, along with her spouse, sued her former employer for violations of the FMLA. They alleged interference and retaliation claims as well as a third claim for loss of consortium which they stated was properly attached to the FMLA claims. Defendant moved to dismiss plaintiffs' claim for loss of consortium arguing that loss of consortium is unavailable in FMLA claims. The district court noted that plaintiffs distinguished each case proffered by defendant and notes that defendant presented scant evidence from the Eleventh Circuit. Finding no definitive case law which barred plaintiffs from bringing a claim for loss of consortium, the district court ruled that it would be inappropriate to dismiss the claim at this stage in litigation.

C. Attorneys' Fees

***Meigs v. Care Providers Insurance Services*, 2024 WL 21792 (E.D. Pa. 2024)**

Plaintiff was awarded a $75,000 judgment in an FMLA matter and sought fees and costs against defendant. Plaintiff's fee application was based on a lodestar. A reasonable hourly rate is determined at the time of the application itself and by the rates that prevail in the relevant legal market. To show a reasonable hourly rate, plaintiff filed declarations showing that its hourly rate was customarily charged by the firm to clients it represented. A 2017 fee survey also reflected that the rate charged by plaintiff was within the range of hourly rates set forth in the survey. In addition, the hourly rate relied on by plaintiff was also supported by the experience and record of the lawyers seeking fees. For this reason, the court upheld plaintiff's hourly rates it sought in its fee application.

The court also rejected defendant's claims that some of plaintiff's billing entries were duplicative, that some administrative tasks such as sending and reviewing emails should be stricken, that the entries were too ambiguously worded, and that entries should be stricken because some of them were, in defendant's view, training of junior associates. The court explained that collaboration and rehearsal among attorneys were appropriate to claim in plaintiff's fee application.

The court also declined to reduce the lodestar amount due to defendant's claim that plaintiff's results in the case was one which warranted a lower lodestar amount. The court, in particular, rejected defendant's contention that the fee request, which was approximately $500,000, would constitute a windfall, explaining that there was no evidence that Congress intended for proportionality between judgments and fees awarded. The court also noted that plaintiff prevailed on all her claims. Moreover, the court would not reduce the lodestar based on the difference between a prior settlement offer made by plaintiff for $500,000 and the ultimate $75,000 judgment plaintiff obtained. While a settlement offer may be relevant in a fee request, the settlement demand in plaintiff's case was irrelevant.

The court also upheld plaintiff's request for reimbursement for reproduction of medical records and travel expenses because those records and expenses were relevant to the litigation.

***Moore v. Mount Zion Baptist Church, et al.*, 2024 WL 3532248 (M.D. Tenn. July 24, 2024)**

Plaintiff brought suit under the ADA and FMLA—along with several common law claims—against her employer, which were ultimately settled according to a settlement agreement under which plaintiff sought attorney's fees to be awarded by the court. Defendants did not dispute that plaintiff was entitled to fees under the FMLA and ADA, nor did they dispute that plaintiff qualified as a "prevailing party" entitled to fees under those statutes. Instead, the only question was what constituted a "reasonable" fee. Plaintiff initially requested an award of $488,748.00 for 1,001.1 hours of work, which the court ultimately reduced to $287,275.27 for 704.97 hours of work. In determining its award, the court utilized the 12 factors from *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717-19 (9th Cir. 1974).

In reaching its fee award, the court determined that it should look at attorney rates for the geographic area of Nashville, where the parties were located, rather than for Columbus, Ohio, where the primary attorneys were located. The court determined that four other attorneys having rejected plaintiff was not sufficient evidence that plaintiff needed to seek counsel from outside the region in order to prosecute her case. Furthermore, the court held that the attorneys' proffered rates were not supported, because the attorneys pointed to class actions cases from, *inter alia*, the SDNY, while this was a single-plaintiff case in Tennessee. As such, the court reduced the requested hourly rates across the board, and calculated a "blended rate" it would use to calculate the lodestar. Following a review of the attorneys' billing records, the court reduced the attorneys' hours across the board by 30%, pointing to what it viewed as duplicative or unnecessary billing, including for "excessive' client communication, as well as billing for certain non-billable items, such as media communication. Overall, the court found that it was not any particular entry that was excessive, but that "the excessiveness and redundancy of the entries taken together is the most concerning issue," and explained that it was unreasonable to bill over 1,000 hours to a single-plaintiff case that settled prior to summary judgment briefing and trial.

***Waller v. The Salvation Army*, 2024 WL 3939568 (N.D. Tex. Aug. 26, 2024)**

Plaintiff employee brought suit alleging defendant former employer violated the FMLA and Title VII. Plaintiff prevailed on her FMLA claims but not her Title VII claims. Plaintiff filed a motion for an award of attorney's fees, costs, and prejudgment interest. Plaintiff requested prejudgment interest on the backpay award beginning on the date of her termination through the date the final judgment was entered.

The court held that the FMLA "requires that reasonable attorney's fees be awarded to a prevailing plaintiff." However, the court went on to state that courts have "the discretion to determine the amount of the fee." Here, there was no question that plaintiff prevailed, even though plaintiff did not recover on all her claims. The court applied the lodestar method to determine an initial estimate of reasonable attorney's fees then decreased the amount based on plaintiff's attorney inadequately documenting her time, improperly block billing, and failing to exercise billing judgment. The court further held that, in the Fifth Circuit, there is a strong presumption that the prevailing party will recover costs, but plaintiff needed to further demonstrate that the costs necessarily result from the litigation. Lastly, the court held that awarding prejudgment interest is mandatory under the FMLA because plaintiff prevailed on her requests for relief. Therefore, the court amended its final judgment to award plaintiff $99,456.00 in attorney's fees and prejudgment interest, with costs to be awarded at a later date.

***Wertheim v. Potter*, 2023 WL 5956991 (M.D. Fla. Sept. 13, 2023)**

Plaintiff, the former general counsel for the county sheriff's office, moved the district court for the Middle District of Florida for a determination of the amount of attorneys' fees and costs to be awarded after the court granted plaintiff summary judgment granted on his FMLA interference claim. The underlying claim arose from defendant's insufficient key-employee notice.

In the first step of its lodestar analysis, the court found that the past fee awards plaintiff relied on to support a $450 per hour rate requested were not helpful because they involved unopposed, non-FMLA claims litigated outside the division. Noting its ability to exercise independent judgment on the issue, the court rejected plaintiff's $450 rate request. The court reasoned that rates for employment disputes in its division were typically lower than plaintiff's requested rate, and the sufficiency of a key-employee notice, though infrequently litigated, was not complex and therefore did not warrant a higher rate.

Instead, the court determined that a $400 rate was appropriate based on the skill and expertise plaintiff's counsel provided in the matter. In the second step of the lodestar analysis, the court determined that a 40% reduction in hours billed was appropriate given that plaintiff had only prevailed on one of his five claims. The court awarded $47,088 in attorneys' fees and an additional $4,108.50 in costs for fees associated with filing, process servers, court reporters, and mediation.

Summarized elsewhere

***McClinton v. Cogency Glob., Inc.*, 2024 WL 1329777 (N.D. Ala. Mar. 27, 2024)**

D. Tax Consequences

IV. Other Litigation Issues

***Laduke v. New York State Off. of Mental Health*, 2024 WL 421284, (S.D.N.Y. Jan. 5, 2024)**

Plaintiff filed a Title VII, ADA, ADEA, and FMLA claim in the U.S. District Court for the Southern District of New York against her employer, defendant. The SDNY court first looked at the issue of venue, meaning where the case should have been brought within the state. The FMLA, which does not have its own venue provision within the statute, follows the general venue provisions of 28 U.S.C. § 1391. Plaintiff did not allege any facts which arose to give venue to the Southern District of New York, as plaintiff herself resided within the confines of the Western District, along with the events regarding the claim, and the addresses for service of defendants were also in the Western District. As such, the court transferred the action to the appropriate court.

***Pitre v. The City of New York*, 713 F. Supp. 3d 13 (S.D.N.Y. 2024)**

Plaintiff is a Hispanic former employee of the city fire department that filed suit against employer and various employees claiming FMLA retaliation, among other allegations. A jury trial was held. During the course of the trial, the court discovered plaintiff had previously sued in state court and settled on the same injuries allegedly giving rise to the present civil action. The court dismissed the case with prejudice for plaintiff attempting to commit fraud on the court and jury by filing multiple lawsuits seeking compensation for the same injuries.

In its dismissal order, the court held that plaintiff failed to establish FMLA eligibility, leaving the record devoid of any evidence establishing whether plaintiff worked the requisite 1,250 hours in the last 12 months and also noting the record was muddled as to whether plaintiff had even asked for FMLA leave. Lastly, the court held plaintiff failed to establish a record to show he had a serious health condition. For these and other reasons, the court dismissed the case.

A. Pleadings

***Brooks v. Binderholz Live Oak*, 2024 WL 4544253 (M.D. Fla. Oct. 22, 2024)**

Plaintiffs brought suit for constructive discharge under the FMLA. In 2020 defendant purchased plaintiff's former employer and rehired many of the former employees, but did not rehire plaintiff. Plaintiff alleges that defendant's failure to hire him back is retaliation under the FMLA for exercising his rights by previously taking FMLA leave. Defendant filed a rule 12(b)(6) motion to dismiss.

The district court for the Middle District of Florida analyzed the FMLA retaliation claim under the but-for causation standard. The court noted that the pleading standard does not present a high burden and that here, plaintiff had alleged sufficient facts to make it plausible that had he not engaged in protected activity while working at the plant, he would not have been passed over for rehire at the plant under defendant's ownership. Plaintiff alleged that he was qualified, had worked in every department, had no disciplinary record, and that many employees, including several with less experience than himself, were rehired. Therefore, the court denied defendant's motion to dismiss.

***Carol B. v. Waubonsee Community College*, 2024 WL 3069974 (N.D. Ill. June 20, 2024)**

Plaintiff brought claims against defendant for both FMLA retaliation and interference. Plaintiff worked as a testing services manager for a community college. Plaintiff's complaint alleged that during the Covid-19 pandemic she had trouble finding childcare for her child. Plaintiff sought an accommodation to work from home temporarily but was rebuffed. Soon after her request, plaintiff's schedule allegedly changed and became increasingly inflexible. Finally, plaintiff alleged that she received a grievance at work the day before she went on FMLA leave for a minor issue that did not result in discipline to anyone else.

Defendant moved to dismiss plaintiff's complaint for failure to state a claim. First, the district court for the Northern District of Illinois held that because a statute of limitations argument is an affirmative defense, plaintiff was not required to plead allegations to overcome the issue. Further, her conclusory allegations were sufficient to allege willfulness so that a three-year statute of limitations applied.

Second, the court held that plaintiff failed to plead an interference claim, reasoning that the Seventh Circuit court of appeals has repeatedly rejected FMLA interference claims where plaintiff was granted the leave they requested and for which they were entitled. However, the court held that plaintiff had sufficiently pled a FMLA retaliation claim because the grievance plaintiff received the day prior to the start of her leave was an adverse action that might dissuade an employee from using their leave or result in an employee ending their leave early.

***Do v. Comcast Corp.*, 2024 WL 3852352 (S.D. Tex. Aug. 15, 2024)**

Plaintiff brought suit under the FMLA for the "suppression of FMLA rights regarding leave of absence and retaliation for exercising those rights." Defendant filed a motion for a more definite statement, asking the court to require plaintiff to re-plead his FMLA claim. Plaintiff's complaint alleges that defendant (1) suppressed and discouraged plaintiff from exercising his FMLA rights; and (2) retaliated against plaintiff by terminating him for exercising his FMLA rights.

Defendant argued the court should require that plaintiff replead this first suppression claim because (1) a suppression of rights claim is not a recognized cause of action under the FMLA; and (2) plaintiff's suppression of rights claim cannot be understood as an interference claim because plaintiff has not established a factual basis for an interference claim. The district court in the Southern District of Texas held that while plaintiff labels his first FMLA claim as suppression of rights, the claim is plainly an interference claim. Failure to use the term interference does not render the claim unintelligible such that it must be re-plead. However, due to other shortcomings in plaintiff's complaint, the court granted plaintiff leave to amend his FMLA interference claim.

***Flack v. Imperial Aluminum – Minerva LLC*, 2024 WL 1325932 (N.D. Ohio Mar. 28, 2024)**

Plaintiff filed a complaint alleging that defendant terminated plaintiff's employment because they accumulated too many absences from work and this termination constituted both interference with Plaintiff's FMLA rights and retaliation against plaintiff for having exercised his FMLA rights. Defendant filed a motion to dismiss the complaint arguing that the complaint did not comply with Rule 10(b) and constituted a "shotgun pleading" because it asserted two distinct FMLA claims under a single count.

The court denied defendant's motion to dismiss plaintiff's complaint as moot because plaintiff filed an amended complaint. However, the court noted that even without the amended complaint, the pleadings were sufficiently clear to have independently recognized that plaintiff was asserting two distinct FMLA claims considering Sixth Circuit precedent.

***Fuller v. Kasai North America*, 2024 WL 4393573 (S.D. Miss. Oct. 3, 2024)**

Plaintiff sued her employer for alleged discrimination and FMLA retaliation. Plaintiff alleged that she was sexually harassed, that the employer ignored her complaints, and that the harassment led to unspecified "personal bodily injuries" for which she took leave from August 2, 2022 to January 30, 2023 (about six months). After returning to work, plaintiff alleged the sexual harassment continued and that she was given unspecified disciplinary infractions. Plaintiff remained employed according to defendant.

The district court in the Southern District of Mississippi granted defendant's motion to dismiss plaintiff's FMLA retaliation claims because she failed to allege facts distinct from her Title VII claims to support retaliation following her leave of absence. In her response to the employer's motion, she did not specifically address her FMLA claims. Plaintiff merely restated legal conclusions and further failed to allege any cognizable adverse employment action related to her leave. The court granted plaintiff leave to amend her complaint.

***Henderson v. Newark Bd. of Educ.*, 2024 WL 3823957 (D.N.J. Aug. 15, 2024)**

Plaintiff, a teacher for defendant school district, filed a complaint alleging, *inter alia*, claims for FMLA interference and retaliation. Defendant moved to dismiss. The New Jersey district court granted defendant's motion without prejudice. Plaintiff alleged that she took FMLA leave due to "health issues and stress" but that during her leave, defendant continued to contact her and forced her to work, that she was told to return to work before she was medically cleared, that when she returned to work there was no work assignment for her, and that she was then transferred to a less desirable position in a different school without her consent.

The court noted that the complaint "appears to assert both an interference claim and a retaliation claim," but held plaintiff failed to sufficiently allege either claim. The court noted that her factual allegations regarding her FMLA leave were "too sparse, confusing, and contradictory for the court to discern a coherent narrative" upon which either claim could be based. On the whole, the factual allegations did not clearly explain when she took FMLA leave, whether her FMLA request was granted or denied, when it was granted or denied, her eligibility for FMLA leave, whether plaintiff followed appropriated FMLA procedures in requesting leave, and when defendant's allegedly retaliatory acts took place. Without clarity on these allegations, the court could not discern a viable FMLA claim and thus dismissed them without prejudice.

***Olson v. Sedgwick County*, 2024 WL 167372 (D. Kan. Jan. 16, 2024)**

Plaintiff sued defendant for interfering with her right to FMLA leave. Defendant filed a motion to dismiss for failure to state a claim. Plaintiff did not respond, and the Kansas district court granted defendant's motion as uncontested. However, the court nonetheless continued and explained that although plaintiff recited each element of an FMLA interference claim, she provided no facts in support of each element. Plaintiff did not explain how she was eligible for FMLA leave,

did not explain how her migraines met the standard of a serious health condition, did not allege that she was denied FMLA leave, and did not provide how she requested FMLA leave. The court found that even if it had looked at the merits of plaintiff's claim, it would have granted the motion to dismiss.

***Ramirez v. Strandco, Inc.*, 2024 WL 2599276 (N.D. Fla. Apr. 30, 2024)**

Plaintiff brought several claims against defendant, including for FMLA interference.. Plaintiff alleged defendant interfered with her FMLA rights when it failed to notify her of her right to take FMLA leave when she became eligible to do so. Defendant moved to dismiss the claim, arguing the complaint did not allege that plaintiff had a serious health condition or that she notified defendant of her need for leave.

The court granted the motion to dismiss, finding that, while the complaint alleged plaintiff received medical treatment for injuries, it did not allege that she was incapacitated and unable to work at any point. Thus, plaintiff failed to sufficiently allege she had a serious health condition that would have entitled her to FMLA. Also, the court found plaintiff did not allege facts that she gave sufficient notice to defendant of her need for FMLA. The allegations that defendant knew about plaintiff's medical condition were insufficient; there was no allegation that plaintiff had notified defendant that she needed time off from work due to her medical condition, which is required to trigger defendant's obligation to notify plaintiff of her right to take FMLA leave.

***Robinson v. Aetna*, 2024 WL 2784342 (S.D.N.Y. May 28, 2024)**

Plaintiff brought *pro se* claims under Title VII, the ADEA, the ADA, and the FMLA, among others. Her complaint alleged that she suffered work-repeated stress and anxiety, she sought FMLA leave "to go to Catholic Charities," and that management denied her leave request rather than "listen to [her] medical provider." Defendant moved to dismiss for failure to state a claim.

The court granted defendant's motion, finding plaintiff had not pled sufficient facts to support an FMLA claim. She did not allege facts about her eligibility for FMLA leave, why her request was denied, or how the denial could give rise to either an interference or retaliation claim. While plaintiff claimed the denial was improper, her complaint did not explain why it was improper under the FMLA.

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***Robinson v. Sedgwick Claims Mgmt. Serv.*, 2024 WL 2784318 (S.D.N.Y. May 28, 2024)**

Plaintiff brought *pro se* claims under numerous federal laws, including FMLA, by providing a laundry list of laws she alleged defendant violated. Plaintiff's complaint alleged that she missed two days of work for which she applied for workers' compensation benefits. But she never alleged that she sought or was denied leave under the FMLA in connection with the events she claimed gave rise to her many claims. The court thus found, *sua sponte*, that plaintiff had failed to state a claim for FMLA violations.

***Wade v. Broadnax*, 2024 WL 3163055 (S.D.N.Y. June 21, 2024)**

Plaintiff employee brought suit against six individual defendants, alleging they retaliated against her and terminated her employment in violation of the FMLA. Plaintiff, proceeding *pro se*, sought damages and an order directing that her employer, who is not specified, reemploy her. The court granted plaintiff's request to proceed *in forma pauperis*. Plaintiff requested leave to file an amended complaint.

The court found that plaintiff had not alleged any facts about whether she requested leave under the FMLA, and, if so, for what purpose, or for how long. The court held that plaintiff's allegations included a conclusory assertion that her rights under the FMLA were violated, and thus failed to state a claim under the FMLA on which relief can be granted. However, the court found that the Second Circuit has cautioned that district courts should not dismiss a *pro se* complaint without granting leave to amend at least once when a liberal reading of the complaint gives any indication that a valid claim might be stated. The court therefore determined that plaintiff may be able to allege additional facts to state a valid employment discrimination claim, including under the FMLA and granted plaintiff 60 days' leave to amend her complaint to detail her claims and name her employer as a defendant.

***Wingo v. Educ. Data Sys., Inc.*, 2024 WL 1219973, at *1 (E.D. Pa. Mar. 21, 2024)**

Plaintiff filed a suit *pro se* against her former employer alleging that she was terminated one day after requesting FMLA leave relating to stress. Although plaintiff did not clearly state any cause of action in her complaint, a district court in the Eastern District of Pennsylvania, assuming that plaintiff may have intended to assert a claim for retaliation under the FMLA, granted defendant's motion to dismiss as she had failed to establish her eligibility for FMLA leave or to allege a causal relationship between her termination and her request for leave.

***Wood v. Christus St. Vincent Reg'l Med. Ctr.*, 2024 WL 1936460 (D.N.M. May 2, 2024)**

Plaintiff brought a claim *pro se* against her former employer and direct supervisor alleging an unspecified violation of the FMLA but failed to include any factual assertions. A district court in New Mexico ordered plaintiff to show cause why it should not dismiss her claim for failure to state a claim and to file an amended complaint containing factual allegations.

Summarized elsewhere

***Christopherson v. Polyconcept N. Am., Inc.*, 2023 WL 8254369 (W.D. Pa. Nov. 29, 2023)**

***Crawford v. Bronx Comm. Coll.*, 2024 WL 3898361 (S.D.N.Y. Aug. 21, 2024)**

***Cumby v. Sunbelt Rentals, Inc.*, 2024 WL 2725183 (W.D.N.Y. May 28, 2024)**

***DeFranco v. New York Power Auth.*, 731 F.Supp.3d 479 (W.D.N.Y. 2024)**

***Domenichello v. Tidal Basin Gov't Consulting, LLC*, 2024 WL 3274725 (D.N.H. July 2, 2024)**

***Duncan v. Kearfott Corp.*, 2024 WL 244263 (D.N.J. 2024)**

***Drepaul v. Wells Fargo Bank, N.A.*, 2024 WL 127402 (D. Conn. Jan. 11, 2024)**

***Flannery v. Spirit Airlines, Inc.*, 2024 WL 1239471 (S.D. Fla. 2024)**

***Fluellen v. City of Philadelphia*, 2024 WL 1468331 (E.D. Pa. 2024)**

***Mahran v. Cty. of Cook*, 2023 WL 8004280 (N.D. Ill. Nov. 17, 2023)**

Marshall v. Westchester Med. Ctr. Health Network*, *2024 WL 665200 (S.D.N.Y. Feb. 16, 2024)

***Martin v. Avant Publ'ns, LLC*, 2024 WL 2785040 (M.D. Pa. May 30, 2024)**

***Sumler v. LeSaint/Tagg Logistics*, 2024 WL 2106176 (W.D. Tenn. May 10, 2024)**

***White v. University of Washington*, 2024 WL 1241063 (W.D. Wash. Mar. 22, 2024)**

***Williams v. Westchester Med. Ctr. Health Network*, 2024 WL 990153 (S.D.N.Y. Mar. 7, 2024)**

B. Right to Jury Trial

Summarized elsewhere

***Ziccarelli v. Dart*, 2024 WL 3740602 (N.D. Ill. Aug. 7, 2024)**

C. Protections Afforded

***Flannery v. Spirit Airlines, Inc.*, 2024 WL 1239471 (S.D. Fla. 2024)**

Plaintiff, a former flight attendant of defendant, alleged defendant fired her in retaliation for exercising her rights under the FMLA. Defendant filed a motion to compel discovery responses after the parties were unable to resolve their disputes as to several interrogatories and requests for production of documents. The three disputed discovery requests sought information regarding plaintiff's health and medical history. The interrogatories at issue asked plaintiff to "identify the reason(s) for and all the facts supporting…that you were 'entitled to protections under the FMLA'…and separately identify each and every disease, illness, injury, disability, defect, medical symptom or other physical or mental condition which you claim qualified you for leave under the FMLA." Interrogatory No. 7 asked Plaintiff to "identify any and all health care practitioners…or any other health care provider of any kind, who has tested for, diagnosed or treated the illness identified…" Finally, Document Request No. 55 sought "[e]xecuted HIPAA releases for each

health care practitioner…or any other health care provider of any kind identified for you in response…"

The district court in the Southern District of Florida granted the motion to compel as to the interrogatories, but denied the document request. In granting both interrogatories, the court noted that they were tailored to allegations contained in the complaint and that there is no physician-patient privilege under federal law and, to the extent that a physician-patient privilege exists, it is only as to confidential communications between the two in the course of diagnosis or treatment. The court also found the requests to be relevant to plaintiff's claims because under both interference and retaliation claims plaintiff must show that she was qualified for FMLA protection. The court denied Document Request No. 55, as the Eleventh Circuit has not yet determined whether the court has power to compel a party to execute a HIPAA release. However, the court noted that defendant could submit HIPAA orders for the court's consideration.

D. Defenses

Summarized elsewhere

***McLaurin v. Georgia Dep't of Nat. Res.*, 739 F.Supp.3d 1254 (N.D. Ga. 2024)**

1. Statute of Limitations

***Arce v. Honeywell Int'l Inc.*, 2024 WL 405065 (D. Ariz. Feb. 3, 2024)**

Plaintiff was hired by defendant in 1996. In March 2019, she was placed on a Performance Improvement Plan. Plaintiff injured her toe in July 2019 and requested continuous FMLA leave and short-term disability from May 1, 2019, through October 31, 2019. Defendant approved this request. She also requested intermittent FMLA leave from July 18, 2019, through January 17, 2020, to care for her son. Defendant denied this request, claiming that plaintiff did not provide a completed medical certification. Plaintiff was later granted unpaid medical leave starting October 31, 2019. In December 2020, defendant sent plaintiff a letter stating they would terminate her employment in 30 days for exceeding the allowable time off unless she returned to work. Plaintiff did not return to work and her employment was terminated in February 2021.

Plaintiff claimed that defendant interfered with her rights under the FMLA with respect to its treatment of the intermittent FMLA leave request and her continuous FMLA leave. The court granted defendant's summary judgment motion on the intermittent FMLA leave claim on the grounds that the claim was time barred. Claims under the FMLA must be brought within two years of an alleged violation and three years for a willful violation. The court reasoned that since plaintiff did not allege or provide evidence that defendant willfully violated her FMLA rights, this claim must be brought within two years of the alleged violation. The court ultimately concluded the claim was time barred because it was brought more than two years after the alleged activity.

The court also granted defendant's summary judgment motion on the continuous FMLA leave claim on the grounds that while it was initially denied, plaintiff was ultimately granted FMLA leave from July 17, 2019, through October 31, 2019. Therefore, the court concluded that she failed to show a *prima facie* FMLA interference case because she did not show she was denied leave entitled by the FMLA.

This decision was appealed on February 2, 2024. It does not appear that a decision has been made on this appeal as of July 16, 2024.

***Burbo v. Epic Prop. Mgmt.*, 2024 WL 775493 (E.D. Mich. Feb. 26, 2024)**

Plaintiff alleged retaliation under the FMLA asserting defendant willfully violated the FMLA. The district court adopted the magistrate judge's report and recommendation, holding that plaintiff's FMLA claim was time-barred. The court noted that the FMLA typically has a two-year statute of limitations, which extends to three years for willful violations. Plaintiff alleged her employment was terminated over two years prior to filing her complaint, necessitating an allegation of a willful violation to be timely. To establish this, a plaintiff must present factual allegations supporting the claim that defendant intentionally or recklessly violated the FMLA. However, the complaint lacked factual allegations beyond conclusory statements to support this assertation. Therefore, the district court granted defendant's motion to dismiss because the FMLA claim was time-barred.

***Coates v. AT&T*, 2024 WL 3152066 (E.D. Mich. Jun. 24, 2024)**

Plaintiff, a premises technician for a telecommunications company filed claims against his former employer after he was terminated for job abandonment following denial of disability benefits. Plaintiff had previously filed two EEOC complaints prior to his termination, but neither mentioned the FMLA. He received a right-to-sue letter for his second complaint after his termination, and he subsequently filed the lawsuit *pro se.* Plaintiff alleged in his lawsuit that he had been subject to unlawful retaliation under the FMLA.

Defendant moved for summary judgment, arguing that plaintiff failed to timely file suit to pursue his claims under the FMLA, and that plaintiff has no evidence to support FMLA retaliation. The district court in the Eastern District of Michigan agreed, noting that plaintiff conceded that he failed to timely file suit because he alleged that the adverse actions occurred in April 2019, more than three years before he filed his complaint. The court also held that plaintiff failed to provide any evidence from which he could establish a prima facie case of FMLA retaliation in response to defendant's properly supported motion.

***Donithan v. Ohio Dep't of Rehab. & Correction*, 2023 WL 7304992 (S.D. Ohio Nov. 3, 2023)**

Plaintiff worked for defendant as a records management supervisor for defendant department of rehabilitation and corrections. Plaintiff took FMLA leave in 2016, 2017, and 2018 to care for her father. Plaintiff applied for, but was denied, various promotions from 2017 through 2021. Plaintiff brought suit alleging that each promotion denial was retaliation for taking FMLA leave. Defendant moved for summary judgment on each of plaintiff's retaliation claims.

The district court for the Southern District of Ohio held that the first two claims of retaliation were time barred because they fell outside even the more generous three-year statute of limitations.

For the remaining claims, the parties disputed whether the evidence submitted by plaintiff was direct or circumstantial. The court concluded that plaintiff's claims should be analyzed under the *McDonnell Douglas/Burdine* burden-shifting framework as the neither statement plaintiff submitted amounts to direct evidence because neither explicitly shows an improper motive for the

specific promotion denials. Instead, even though the statements demonstrate animus toward employees who take FMLA leave, a factfinder would need to infer that the decisions not to promote plaintiff were tainted by such animus. The court noted that an interview panel participant, who helped to select those given promotions, was unaware of plaintiff's FMLA status and therefore, plaintiff's FMLA status did not influence her promotion recommendation. The court found that plaintiff offered no evidence to contradict this, nor did she offer evidence to show that any other panelist knew or considered her FMLA status for the promotions.

Further, the court noted that plaintiff's argument seemed to allege that the FMLA retaliation arose when the promotion recommendations were not overridden to appoint plaintiff to one of the open positions for the promotion. The court found this to be too attenuated. Additionally, the court found plaintiff's invocation of temporal proximity was insufficient to satisfy her prima facie case as she failed to cite any evidence concerning the specifics of when she took the FMLA leave in relation to the hiring decisions. The court found plaintiff failed to establish a prima facie case with respect to both promotions and that defendant is entitled to summary judgment on both claims.

***Fluellen v. City of Philadelphia*, 2024 WL 1468331 (E.D. Pa. 2024)**

Plaintiff brought this action against defendants alleging interference and retaliation in violation of the FMLA. Plaintiff specifically alleged that defendant disregarded her FMLA approved leave and wrongfully discharged her twice. Plaintiff also asserted that defendant attempted to coerce her to accept another position after her second termination. Defendants moved to dismiss plaintiff's Second Amended Complaint for failure to state a claim upon which relief can be granted and defendant city further argued that plaintiff's claims were time-barred.

The district court in the Eastern District of Pennsylvania held that plaintiff's FMLA claims were time-barred because plaintiff resigned more than three years prior to plaintiff's complaint filing date. Plaintiff also alleged that after her resignation, defendant tried to coerce plaintiff into accepting a different position in the city. While the court held that that act was not time-barred, it held it did not amount to a cause of action under the FMLA, let alone one that would extend the statute of limitations period. Plaintiff did not allege that defendant discouraged her from using authorized FMLA leave or that it refused to authorize FMLA as part of its "coercion" and, therefore, failed to establish a claim of interference. Although the court noted that the Third Circuit had not addressed post-employment retaliation claims, even if post-employment retaliation claims are permitted under the FMLA, plaintiff failed to establish a claim here, as she did not allege that defendant refused to rehire her based on her previous FMLA leave or that it had harmed her future employment opportunities from a different employer.

***Hughes v. Novo Nordisk, Inc.*, 2024 WL 2131676 (D.N.J. May 13, 2024)**

Plaintiff, a brand marketing employee, complained to her supervisor in early 2016 and early 2017 about race discrimination, citing her failure to receive a company award for her work on a product launch. After complaining, she faced disciplinary actions for policy violations related to payments made to outside speakers and improper use of her corporate credit card, which she believed were retaliatory. In 2017, an internal investigation resulted in a report substantiating

compliance complaints against plaintiff, and she was terminated. Plaintiff had applied for FMLA leave to care for a sick parent a week before termination; the request was denied post-termination.

Plaintiff sued for FMLA interference and retaliation. The New Jersey District Court granted summary judgment for defendant, finding the claims time barred as the suit was filed after the statute of limitations expired. Plaintiff was terminated on February 28, 2018; her FMLA request was denied on March 1, 2018; and her suit was filed on April 23, 2020. The court found that the employee made no argument and pointed to no evidence to support a finding that defendant willfully violated her FMLA rights, such that the statute of limitations should be extended.

The court noted that even if not time-barred, the claims would fail due to lack of causation evidence. The termination decision-maker was unaware of plaintiff's FMLA request, which was made after the compliance violation report. Additionally, defendant encouraged FMLA leave use, undermining claims of retaliatory intent. Consequently, both the FMLA interference and FMLA retaliation claims failed.

***Kemp v. Regeneron Pharms., Inc.*, 117 F.4th 63 (2d Cir. 2024)**

Plaintiff, an auditor, worked for employer, defendant, for many years before requesting to work remotely in order to care for a family member. Plaintiff had previously done similar remote work or taken FMLA leave without issue. Upon her return to the office, her supervisor told her that her remote work was problematic and there was discussion about changing her position. Plaintiff was then promoted soon after but retired quickly after that.

Plaintiff sued defendant in the New York district court for FMLA interference and state law discrimination and retaliation. The district court granted summary judgment for defendant on all claims. Plaintiff appealed the summary judgment decision to the circuit court of appeals. The Second Circuit affirmed the district court's summary judgment decision, finding that on the FMLA claim plaintiff failed to show that the employer acted willfully when allegedly interfering with her FMLA rights, especially considering there was no FMLA request. Willfulness was required to make a timely FMLA claim for plaintiff.

***Kurtanidze v. Mizuho Bank. Ltd.*, 2024 WL 1117180 (S.D.N.Y. Mar. 13, 2024)**

Plaintiff brought suit against his employer for, *inter alia*, FMLA interference and retaliation for a multitude of actions, including—after he requested leave—assigning him tasks late in the day to force him to work late and denying him intermittent leave. Defendant employer moved for summary judgment. On the interference count, defendant argued that the statute of limitations had run. The court granted only partial summary judgment on this count, explaining that, while the interfering event does need to have occurred within the statute of limitations, the three-year limitations period applied in this case, and at least one ostensible incident of interference had occurred within this period. As the court explained, even though plaintiff "requested the 'reasonable accommodation . . . of taking breaks throughout the day'" instead of specifically referring to FMLA leave, "the employee need not use any magic words," and such "information imparted to the employer" was sufficient to put defendant on notice that plaintiff was requesting FMLA leave.

On the retaliation count, defendant similarly argued a statute of limitations defense, as well as that, because defendant had denied plaintiff's FMLA request, plaintiff could not show that he had exercised a right under the FMLA sufficient to sustain a retaliation claim. Defendant then argued that there was not a temporal or factual connection between plaintiff's request for leave and adverse action sufficient to sustain an inference of causation. The court dismissed any alleged retaliatory incidents that fell outside of the three-year statute of limitations, explaining that the limitations period runs from the day on which the retaliatory action actually occurs, even if a plaintiff continues to feel the effects of that action thereafter. As for the causation argument, the court explained that plaintiff had alleged retaliatory acts occurring in the months after he requested leave, which was a sufficient time period, and bolstered by the fact that plaintiff had alleged his supervisors made comments to him denigrating his leave request.

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***Mineo v. Town of Hempstead*, 2024 WL 1077874 (E.D.N.Y. 2024)**

Plaintiff took two FMLA leaves while employed by defendant and claimed that a series of adverse employment actions formed the basis of a retaliation claim against defendant. A district court magistrate judge in New York issued a Report & Recommendation granting defendant's motion dismiss on statute of limitations grounds based on a two-year statute of limitations for non-willful violations and three years for willful violations. Even under the three-year statute, the last

event constituting the alleged violation occurred more than three years before plaintiff filed his complaint. Plaintiff's FMLA retaliation claim was therefore time barred.

Plaintiff's retaliation claim also failed because he did not suffer an adverse employment action. In his complaint, plaintiff alleged that questions about bathroom breaks, denial of training and other "petty slights" constituted the retaliatory acts in response to plaintiff's taking of FMLA leave. The court held those acts did not qualify as an adverse employment action because it did not involve a material change in plaintiff's terms and conditions of employment. The court also found that plaintiff failed to establish a causal connection between his FMLA leaves and a series of alleged adverse employment actions such as denial of free training, reasoning that plaintiff complained to defendant not about FMLA leave but due to the voicing of concerns of investigations defendant had conducted while he was employed by defendant.

Plaintiff's interference theory was also dismissed on statute of limitations grounds. Plaintiff alleged that because defendant disclosed his medical information to the husband of a female employee, defendant interfered with his rights under the FMLA. However, as with his retaliation claims, the last of the acts forming the basis of his interference claim occurred more than three years from the time plaintiff filed his complaint.

***Pillow v. McDonough*, 2024 WL 4213216 (N.D. Ill. Sept. 16, 2024)**

Plaintiff, proceeding *pro se*, brings this action against defendant Secretary of Veterans Affairs, claiming she was wrongfully denied leave under the FMLA. Plaintiff was a healthcare technician at a VA hospital who claimed that she always met expectations, despite living with an unspecified mental health disability. Plaintiff alleged in 2018 she requested FMLA leave, and her supervisors refused to sign the form. Defendant asserted it was not signed because plaintiff refused to allow defendant access to her medical records. Plaintiff filed two EEO complaints before filing this lawsuit. Defendant moved to dismiss the complaint under Rule 12(b)(6).

Plaintiff claimed that defendant violated the FMLA in denying her request for leave and retaliating against her by refusing to evaluate her workplace performance. The court determined that any conduct that could have constituted retaliation or interference under the FMLA was time-barred. Plaintiff's records showed her last accrual date for an FMLA retaliation claim was June 27, 2019, but plaintiff did not file the instant lawsuit until November 22, 2022. Therefore, the court granted defendant's motion to dismiss on plaintiff's FMLA claims.

***White v. DeJoy*, 2024 WL 1538428 (S.D. Ala. Apr. 9, 2024)**

The *pro se* plaintiff, a letter carrier for defendant, U.S. Postal Service, filed a lawsuit alleging that he was denied leave in violation of the FMLA, after previously attempting to raise his FMLA claim in a charge filed with the Equal Employment Opportunity Commission ("EEOC"). The district court dismissed plaintiff's FMLA claims as untimely. The court held that a plaintiff seeking to file an FMLA claim must choose between filing a complaint with the U.S. Secretary of Labor, or filing a private lawsuit. The court further held that if the employee files a private lawsuit, it must be filed within two years after the last action which the employee contends was in violation of the Act, or three years if the violation was willful.

Summarized elsewhere

***Christopherson v. Polyconcept N. Am., Inc.,* 2023 WL 8254369 (W.D. Pa. Nov. 29, 2023)**

***Johnson v. DeJoy,* 2024 WL 4215557 (D.D.C. Sept. 17, 2024)**

***Landolfi v. Town of North Haven,* 2024 WL 3925332 (D. Conn. Aug. 23, 2024)**

***Walls v. Miller Edge, Inc.*, 2024 WL 1836499 (E.D. Pa. Apr. 26, 2024)**

***Hayes v Maryland Transit Administration,* 2023 WL 8829260 (D. Md. 2023), aff'd 2024 WL 4262786 (4th Cir. Sept. 23, 2024)**

a. General

b. Willful Violation

***Christopherson v. Polyconcept N. Am., Inc.*, 2023 WL 8254369 (W.D. Pa. Nov. 29, 2023)**

Plaintiff filed a lawsuit against her former employer alleging four separate counts of FMLA interference and a FMLA retaliation claim. Defendant moved to dismiss all claims. The district court for the Western District of Pennsylvania dismissed the first two claims, holding they were barred under the two-year statute of limitations. Although plaintiff argued the claims were "willful" violations with a three-year statute of limitations, the court found those allegations conclusory and unsupported, and such conclusory statements are disregarded when the court considers a Rule 12(b)(6) motion.

For her third FMLA interference claim, plaintiff alleged that defendant had interfered with her rights because defendant refused to retroactively designate a day that she had missed work as FMLA leave. In dismissing that claim, the court held that defendant *could* have decided to retroactively designate that day as an FMLA leave day, but plaintiff did not adequately plead entitlement to that benefit. Further, the court held that to the extent that plaintiff's argument opposing dismissal was premised on defendant's purported failure to further investigate the connection between her absence and a serious health condition, she mistook certain employer rights to verify medical certifications pursuant to 29 C.F.R. § 825.307 as employee entitlements.

Finally, the court dismissed the FMLA retaliation claim because it was duplicative of the interference claims, and the vague reference to retaliatory intent addended to her FMLA interference claims does not plausibly allege a claim for FMLA retaliation.

***Foster v. Credit One Bank, N.A.*, 2024 WL 4625291 (9th Cir. Oct. 30, 2024)**

Plaintiff, a former Collection Representative for defendant bank, sued her former employer for ADA and FMLA interference and retaliation violations. Plaintiff alleged that she had been fired because of several stints of FMLA leave for anxiety and depression, whereas defendant asserted the termination was for her use of racial and homophobic slurs in front of coworkers. Notably, because the lawsuit was filed more than two years after the events in question, plaintiff needed to have established the violations were "willful" in order to apply the FMLA's extended three-year statute of limitations. Defendant moved for summary judgment, which the Nevada district court granted. Plaintiff appealed, and a three-judge panel of the Ninth Circuit affirmed.

With respect to the FMLA interference claim, the appellate court reasoned that the employee had provided no evidence that her employer had willfully considered her use of FMLA leave when terminating her, noting that the employee had admitted she did not believe her use of FMLA leave was related to her termination and that she had taken FMLA leave several times without incident, whenever she felt it necessary. With no dispute of fact as to willfulness apparent, the appellate court affirmed.

With respect to the FMLA retaliation claim, the appellate court observed that the employee had not actually pleaded retaliation under the FMLA, only interference. Finding no evidence that this was a mistake, the appellate court concluded that it could affirm the district court's grant of summary judgment without reaching the merits. Nevertheless, the appellate court noted in *dicta*, it would resolve the retaliation claim in the employer's favor for similar reasons as the interference claim.

***Morris v. New York State Dept. of Corr.*, 2024 WL 4252049 (N.D.N.Y. Sept. 20, 2024)**

Plaintiff sued her employer for FMLA interference and retaliation in connection with her FMLA leave to take care of her mother. Plaintiff's FMLA interference claim was based on defendant's denial of FMLA leave on one particular Friday amongst other grants of intermittent FMLA leave. Her FMLA retaliation claim was based on defendant's failure to promote plaintiff after she had taken FMLA leave. Defendant sought to dismiss both counts.

First, defendant sought to dismiss the interference count on the grounds that it had occurred more than two years prior to the filing of the lawsuit. Plaintiff argued that defendant's violation was willful, and that she should thus receive the benefit of a three-year statute of limitations. The New York district court disagreed, explaining that plaintiff never alleged in the complaint that defendant's actions were willful, nor did the complaint contain allegations going directly to willfulness. The court went on to explain that the case law generally indicates that "an isolated denial of FMLA leave is insufficient to allege willfulness without more evidence," and that it was not even clear under the law that plaintiff would be entitled to FMLA leave for plaintiff's proffered reason—to clean out her mother's apartment. As such, the court held, the complaint did not sufficiently allege willfulness.

Second, the court held that, while plaintiff's retaliation claim was timely, plaintiff had nevertheless not sufficiently stated a claim for retaliation. Per plaintiff's allegations, at least 15 months passed between plaintiff's taking of FMLA leave and defendant's denial of her promotion. As the court explained, that was a sufficiently long period of time to "break the causal inference of retaliatory intent" without some additional evidence. The court found that plaintiff had not provided any such additional allegations, and dismissed the retaliation claim.

***Thurston v. W. All. Bank*, 2024 WL 961433 (D. Ariz. Mar. 6, 2024)**

Plaintiff brought suit against her former supervisor and former employer claiming, *inter alia*, interference and retaliation under the FMLA. Plaintiff alleged that throughout her employment, she experienced various medical issues, which she communicated to defendants, that required her to take time off under defendant-employer's PTO policy and to work from home. Despite such purported knowledge of plaintiff's medical issues, defendants did not advise her of

her right to take intermittent medical leave under the FMLA until after stripping her of her job duties, demoting her, and presenting her with a Performance Improvement Plan ("PIP"). Plaintiff then alleged she requested, and was approved to take, FMLA leave. While on her FMLA leave, she updated defendant-supervisor on all the ways she believed she met the goals of the PIP, but he told her it was "too little too late" and her employment was terminated.

Defendants filed a motion to dismiss arguing that plaintiff failed to plausibly allege: (1) defendants had acted willfully, and that, failing to do so, plaintiff was barred from recovering for any alleged violation which occurred more than two years prior to her complaint; (2) her former supervisor was an "employer" under the FMLA; and (3) she was retaliated against for taking FMLA leave. Plaintiff did not oppose defendants' motion regarding her retaliation claim if her factual allegations tied to the retaliation claim would still be considered, so the district court dismissed the retaliation claim but not those factual allegations relevant for her interference claim. The district court, however, was not convinced by either of defendants' other arguments regarding her FMLA claims.

The district court stated that a claim will be dismissed as time-barred "only if the untimeliness appears beyond doubt on the face of the complaint." The district court found that plaintiff's complaint sufficiently alleged willful conduct because she had plausibly alleged that she had kept defendants updated on her medical issues, defendants knew she could use intermittent leave under the FMLA, and defendants waited until they could provide her with a PIP before informing her of her right to take intermittent leave under the FMLA. The district court also denied defendants' motion regarding the supervisor's liability under the FMLA stating that the Ninth Circuit has not stated whether individuals may be liable under the FMLA but has suggested that some supervisory employees can be employers. The district court then looked to comparable FLSA cases, as the FLSA and FMLA share the same definition of employer and stated that plaintiff had pled sufficient facts under an "economic realities" test to allege that defendant-supervisor was an employer.

Summarized elsewhere

***Burbo v. Epic Prop. Mgmt.*, 2024 WL 775493 (E.D. Mich. Feb. 26, 2024)**

***Carol B. v. Waubonsee Community College*, 2024 WL 3069974 (N.D. Ill. June 20, 2024)**

***Gregg v. Northeastern Univ.*, 2024 WL 3625548 (D. Mass. Aug. 1, 2024)**

***Mcloughlin v. Village of Southampton*, 2024 WL 4189224 (E.D.N.Y. Sept. 13, 2024)**

2. Sovereign Immunity

***Butrick v. Dine Develop. Corp.*, 2024 WL 4643258 (E.D. Va. Oct. 30, 2024)**

Plaintiff worked as a contracts administrator for defendant, a wholly owned corporation of the Navajo Nation. Prior to taking a maternity leave, plaintiff had received positive performance reviews, but less than two months after she returned, she was placed on a performance improvement plan. Less than a month later, she was terminated for performance issues. Plaintiff, a remote employee, also requested that remote meetings and calls be scheduled around her break

milk pumping schedule, but defendant instead made her travel to meetings. Plaintiff filed a lawsuit alleging that defendant violated the FMLA by interfering with her FMLA rights and retaliated against her for complaining about discrimination under the FMLA.

Defendant moved to dismiss the complaint, arguing that the court lacked subject matter jurisdiction because suits against Indian tribes are barred by sovereign immunity absent a clear waiver by the tribe or congressional abrogation. In the absence of waiver or abrogation, the court lacks subject matter jurisdiction. The district court for the Eastern District of Virginia opined that the FMLA contains no mention or reference to Indian tribes and that Congress knows, and often does, expressly indicate whether a statute abrogates immunity. The court noted that plaintiff did not identify any court that has held the FMLA unequivocally abrogates tribal immunity and that, while the Fourth Circuit has not yet weighed in on the question, courts elsewhere have uniformly held the FMLA does not abrogate tribal immunity. Consequently, the court held that tribal immunity applies absent waiver by defendant or the Navajo Nation.

Plaintiff argued that defendant's employee handbook waived immunity by stating that "Although the Company has sovereign immunity, the Company voluntarily complies with the federal [FMLA], but the court declined to read into the handbook any waiver of tribal sovereign immunity absent further language unequivocally waiving immunity. Finally, the court rejected plaintiff's argument that she should nonetheless be entitled to pursue injunctive relief against the individual defendant, holding that plaintiff's reinstatement request did not remedy any ongoing violation of federal law. Thus, in light of defendant's sovereign immunity, the court dismissed plaintiff's complaint.

***Chan v. Dept. of Human Servs.*, 2024 WL 3597199 (D. Md. July 31, 2024)**

Plaintiff worked for defendant as a child welfare caseworker and then family services therapist. Plaintiff began a medical leave in early 2022. Her condition progressed and she was placed on indefinite paid medical leave in March 2022. In September 2022, after her paid leave wawa exhausted, Plaintiff was moved to leave without pay status. Plaintiff then requested to use FMLA leave, but was told that her leave had exhausted in June 2022 while she was using paid leave. Plaintiff was told she needed to receive a full medical clearance or resign if she wanted to be eligible for reinstatement, which she did, although she claimed it was under duress. Plaintiff then sued defendant for FMLA violations.

The court granted defendant's motion to dismiss as to defendant department of human services, holding that the Eleventh Amendment affords states immunity from suit in federal court absent their consent. However, the court denied defendants' motion to dismiss as to the three individual employees, holding that they could be subject to individual liability under the FMLA if they acted, directly or indirectly, in the interest of the employer, and that plaintiff's complaint contained sufficient factual allegations to plausibly assert a claim under this theory.

***Mack v. Maryland Dep't of Hum. Servs.*, 2024 WL 580672 (D. Md. Feb. 13, 2024)**

Plaintiff was employed by the Maryland Department of Human Services. Plaintiff requested reasonable accommodations throughout his employment and was approved for medical leave to take time away from work. Defendant terminated Plaintiff shortly after her requested

medical leave, and he subsequently filed suit for disability discrimination and violations of the FMLA. Defendant moved for dismissal, or summary judgment in the alternative, on plaintiff's FMLA claim.

The Maryland United States District Court granted defendant's motion to dismiss on sovereign immunity grounds. The court held, pursuant to *Coleman v. Court of Appeals of Md.*, 566 U.S. 30, 43–44 (2012), that congress did not abrogate state sovereign immunity with respect to the self-care provisions of the FMLA. The court proceeded to apply the Maryland Supreme Court's state-law test for whether an entity is entitled to sovereign immunity. Finding no statutory waiver of immunity, the court determined defendant was immune from plaintiff's FMLA self-care claim. The court disregarded plaintiff's argument that defendant waived sovereign immunity by removing the case to federal court, and accordingly dismissed plaintiff's FMLA claim without prejudice.

***Prior v. State of Delaware Div. of Developmental Disability Servs.*, 2024 WL 3359503 (D. Del. July 10, 2024)**

Plaintiff brought suit under Title VII, the ADA, and the FMLA alleging that defendant retaliated against her by denying plaintiff the ability to use her sick days after her FMLA leave expired and putting her on unpaid leave. Defendant moved to dismiss the complaint for failure to state a claim under Rule 12(b)(6).

Defendant argued that plaintiff's cause of action was insufficiently pled and that, alternatively, defendant was immune from suit under the Eleventh Amendment. The court agreed that defendant was immune from a suit for FMLA interference under the Eleventh Amendment as a State agency, because plaintiff's claim was brought under the FMLA self-care provision which the Supreme Court has held are barred based on sovereign immunity. Further the court noted that defendant had not waived its sovereign immunity, and that there is no dispute that defendant is a state agency. Therefore, the court granted defendant's motion to dismiss the FMLA interference claim.

***Short v. State of Delaware Division of Health and Social Services*, 2024 WL 4388266 (D. Del. 2022)**

Plaintiff brought FMLA interference and retaliation claims to challenge her state agency employer's termination decision, which occurred one day after plaintiff began FMLA leave. Defendant raised sovereign immunity at summary judgment, and plaintiff conceded defendant's sovereign immunity. The court granted the motion for summary judgment.

Summarized elsewhere

***Stockslager v. D.C. Nat'l Guard*, 703 F. Supp. 3d 695 (D. Md. 2023)**

3. Waiver

***Harper v Lockheed Martin Corporation*, 2024 WL 361313 (5th Cir. Jan. 31, 2024)**

Plaintiff made internal HR complaints about behavior or comments that she perceived as discriminatory and retaliatory in between 2018 and 2020, including comments regarding her use

of FMLA leave. Meanwhile, in March of 2020 defendant investigated plaintiff for alleged inappropriate sexual comments in the workplace. The investigation led to review of plaintiff's perceived failures in leadership. As a result of the latter two investigations, plaintiff was given a two-week suspension without pay and was also transferred to a non-leadership job.

Plaintiff thereafter resigned, filed administrative charges and brought a three-count lawsuit, including an FMLA retaliation claim.

The District Court granted the employer summary judgment on all claims on the theory that the actions complained of did not rise to the level of "ultimate employment actions." Plaintiff appealed and in the interim, the "ultimate employment actions" rubric was overruled. Nonetheless, the appellate court upheld summary judgment for defendant on the FMLA claims because Plaintiff forfeited her FMLA retaliation claim by failing to present proper arguments on that issue in her appellate brief.

Summarized elsewhere

***Mack v. Maryland Dep't of Hum. Servs.*, 2024 WL 580672 (D. Md. Feb. 13, 2024)**

4. *Res Judicata* and Collateral Estoppel

***Bell v. CSX Transportation, Inc.*, 733 F.Supp.3d 385 (D. Md. 2024)**

Plaintiffs, a class of railroad employees, sued defendant employer for violations of the FMLA, including alleging that they were disciplined in retaliation for their FMLA use. All but seven of plaintiffs engaged in arbitration, which the parties agreed was essentially an appellate review of defendant's disciplinary decisions, limited to the record generated by defendant's internal investigation. When the arbitrations concluded, defendant sought summary judgment arguing that plaintiffs' claims are preempted by the Railroad Labor Act ("RLA") and that plaintiffs were precluded from relitigating issues already decided in arbitration.

The court held that plaintiffs' claims were not preempted by the RLA because plaintiffs seek to vindicate a statutory right rather than a right under the CBA, and the court need not consult the CBA at all to determine whether their claims are viable. The court also denied defendants' issue preclusion argument, holding that issue preclusion cannot apply to the seven plaintiffs whose claims were never subject to arbitration, and as to the remaining plaintiffs, controlling Supreme Court caselaw prohibits giving issue-preclusive effect to the prior factual findings of arbitrators when those arbitrators were empowered only to decide issues arising from a CBA.

***Hayes v Maryland Transit Administration*, 2023 WL 8829260 (D. Md. 2023), aff'd 2024 WL 4262786 (4th Cir. Sept. 23, 2024)**

Plaintiff was approved for intermittent FMLA leave on April 21, 2016 through April 21, 2017, for a qualifying disability. She was accused of falsifying a request for FMLA leave by attending a social event on a day she utilized FMLA leave. Plaintiff was given a 5-day suspension for the alleged falsification. The employer then sent a letter on January 17, 2017, stating that her failure to provide requested medical documentation to substantiate additional leave by a required deadline meant that she had voluntarily resigned as of January 4, 2017.

Plaintiff, however, alleged that she was actually terminated in November 2016. In March 2018 Plaintiff filed suit alleging violations of Title VII, the ADA and the FMLA against the employer and several of its employees. The initial lawsuit was dismissed with prejudice on summary judgment as untimely, and the appellate court affirmed this decision. Plaintiff thereafter filed a new lawsuit in state court, which was removed to federal court and dismissed under Rule 12(b)(6) for both *res judicata* and statute of limitations problems.

5. Equitable Estoppel as a Bar to Certain Defenses

***Mitchell v. County of Chautauqua*, 2024 WL 3276312 (W.D.N.Y. July 1, 2024)**

Plaintiff was an Assistant District Attorney in defendant's District Attorney's office. Plaintiff brought suit in the Western District of New York against her former employer alleging that defendant interfered with her right to take FMLA leave and retaliated by terminating her employment after she requested such FMLA leave. Plaintiff also alleged that even if she was not eligible for FMLA protection, defendant was barred by equitable estoppel from raising her ineligibility as a defense because it represented to plaintiff that she was eligible for leave. Defendant moved to dismiss both claims. The district court denied defendant's motion to dismiss as to both claims.

With respect to plaintiff's interference claim, the court rejected defendant's argument that plaintiff could not plausibly allege that she was eligible for FMLA leave because she had not been employed by defendant for at least twelve months before she submitted her leave request. The court held that defendant may be equitably estopped from challenging plaintiff's FMLA eligibility because it represented to plaintiff that she was eligible for leave by providing her FMLA certification forms to complete with her healthcare provider and telling her that her FMLA leave would become effective the day she returned the certification form. The court further reasoned that employees can generally assume they are protected by the FMLA "unless informed otherwise." Here, plaintiff was not informed that she did not meet the 12-month eligibility requirement, so the court deemed that her reliance on defendant's conduct asserting her eligibility for FMLA protection may be reasonable.

The court likewise held that defendant may be equitably estopped from contesting whether plaintiff satisfied the twelve months of employment requirement for FMLA protection in regard to her FMLA retaliation claim.