

For Any Lawful Reason: Firing an at-will employee under dubious circumstances need not lead to liability if the reason for the firing was not illegal

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A recent decision from the Sixth Circuit Court of Appeals highlights the distinction between firing an employee for personal or politically expedient reasons (which may be entirely legal) and firing an employee because of his or her protected status or for exercising protected rights (which is typically illegal). The decisive question answered in this case was ***can an employer terminate an employee currently on medical leave if the motivation for the firing is distasteful but unrelated to the leave?***

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In *Mullendore v. City of Belding, Mich.*, the city council may have acted less than courageously by quickly firing a controversial city manager while she was out of the office for medical reasons and therefore not around to defend herself. But there was no real evidence that her medical condition actually motivated the firing (as opposed to permitting the council to fire her without having to face her), so there was no violation of the Family Medical Leave Act (“FMLA”).

Margaret Mullendore was the city manager of Belding, Michigan, working for a city council whose operations “are fairly described as being somewhat fraught with political drama.” Mullendore herself was a somewhat controversial figure, having fired a city police officer who was later reinstated, generating vocal criticism of Mullendore’s original decision.

Mullendore was also an at-will employee who could be terminated at any time by a vote of the city council.

In November 2014, one of Mullendore’s supporters on the city council lost a recall election to a candidate who had already openly criticized Mullendore and urged a change in the city’s administration. The new representative quickly sent the rest of the council an email advocating Mullendore’s termination.

Approximately a month later, Mullendore was forced to take time off from work due to an ankle injury that required surgery. Mullendore informed the city of her need for time off,

although it was a point of dispute in the case whether she had actually invoked her legal rights under the FMLA. The city was aware of her plans to take medical leave and raised no objections, even purchasing a laptop for her to make it easier to work from home during her absence.

However, at a city council meeting shortly after Mullendore's leave began, the new council member moved to terminate her employment immediately, even though there was no agenda item regarding her employment for the meeting, and Mullendore herself was not present to defend her record. The motion passed, although at least one council member was clearly reluctant to proceed in that manner.

Mullendore claimed violations of the FMLA, contending that she was fired for exercising her rights under that statute. This raised two key legal questions:

- (1) Whether Mullendore had in fact invoked her FMLA rights or whether she was simply taking a more informal medical leave; and
- (2) Whether the actual reason for her termination was her FMLA-protected leave.

The district court, granting summary judgment to the city, found both that Mullendore had failed to properly invoke FMLA rights when announcing her leave and that there was no evidence of illegal motive on the city's part, *i.e.*, that Mullendore was not fired *because of* her alleged exercise of FMLA rights.

On appeal, the Sixth Circuit affirmed summary judgment in the city's favor, but only on the grounds that there was no evidence of illegal motive. The Court of Appeals found that there was a factual dispute as to whether Mullendore's actions properly invoked the FMLA, but it did not matter, since there was simply no proof that taking FMLA leave was the actual reason for Mullendore's firing.

This is often the central issue in discrimination, retaliation and other statutory employment claims: Was the protected conduct or protected status of the employee the actual reason for the adverse employment action? Mullendore tried to rely on the fact that the action occurred while she was on medical leave, but timing, while important, is not everything. This was particularly true because the new council member who spearheaded Mullendore's firing had announced his intention to do so even before her medical condition arose. The council may have found it expedient to get rid of Mullendore while she was not present at the meeting to defend herself, but that also does not prove illegal motivation:

"At best, the evidence demonstrates that the members of the City Council terminated her when she was not at their meeting because it was personally or politically expedient to do so behind her back."

That was simply not enough.

The case illustrates several key features of employment claims that require proof of

motive:

- A credible bad reason for firing someone is not a violation of the law. The court's description of the evidence places the city council in a somewhat poor light. They appear as obsessed with political "drama," and terminating Mullendore "behind her back" is not a particularly courageous action. But the evidence strongly – indeed, decisively – demonstrated that political drama was the basis for Mullendore's termination and that the timing arose from the desire not to confront Mullendore rather than from any animus towards the exercise of FMLA rights. The council does not look good in this case, but it did not act illegally.
- Suspicious timing is often not enough. Mullendore's strongest point was probably that the firing occurred precisely while she was on a medical leave. She argued that this at least strongly suggested that the medical leave was the (illegal) motivation for her firing. But the city council was able to point to evidence that the termination was under consideration before the medical situation arose. This made the city's version of events (a desire to terminate Mullendore behind her back) credible and merely suspicious timing was not enough to defeat summary judgment.
- Two grounds for summary judgment are often better than one. In the trial court, the city won the case for two separate reasons, both the failure to formally invoke FMLA rights and the lack of evidence of illegal motive. The Sixth Circuit did not agree with the first reason, finding that there was a dispute as to whether Mullendore had properly invoked the FMLA. But the second reason stood up to appellate review, and that one reason, the lack of motive, was sufficient to preserve the city's victory in the case.