

**Careless Remarks Can Doom Otherwise Lawful Termination**

**April 2007**

In a recent case handed down by the U.S. District Court for Connecticut, an employer's motion for summary judgment was denied because of careless comments made by supervisors prior to and during a discharge meeting. *Dupee v. Klaff's Inc.*, 2006 U.S. Dist. LEXIS 81592 (Nov. 8, 2006). A security guard employed by Klaff's was injured in an on the job motor vehicle accident. Following his injury he missed approximately one month of work and continued to be absent periodically for medical treatment. All time off was covered by the Family and Medical Leave Act. He was terminated about one year after the accident for alleged poor performance, including failures to report off when absent.

In his complaint, the guard claimed his performance was satisfactory, he had provided appropriate notice when absent, and that he was actually terminated in retaliation for missing time from work. In making his claim, he relied on statements made by managers immediately following his injury and during the termination process. Specifically, he stated that a co-owner of the company told him she was very upset about the accident, he needed to return to work, and that nothing was really wrong with him. Another senior manager allegedly ridiculed him in front of co-workers and implied his follow-up doctor's appointments were unnecessary. At his termination meeting, in reply to his request for an explanation, he was told by his supervisor that he was being terminated because he had too many doctor's appointments.

The court found these statements alone were sufficient to deny Klaff's motion for summary judgment as they indicated retaliatory animus in violation of the FMLA. This case points out that even when a legitimate basis for termination may exist, an employer's statements can undermine its position. Employers should communicate carefully with employees exercising their FMLA rights and thoroughly prepare for any termination discussion to ensure the rationale provided complies with all legal requirements.

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