

Employer Has Burden to Justify Denial of Post-FMLA Job Reinstatement

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In a case of first impression, the Connecticut Supreme Court clarified the framework for analyzing a claim of interference with an employee's right to reinstatement under the Connecticut Family and Medical Leave Act. *Cendant Corp. v. Comm. of Labor*, 276 Conn. 16 (2005). The Court held that an employer is strictly liable for a failure to reinstate an employee following a leave; however, the employer may assert an affirmative defense that the employee would still have been terminated even if she had not taken the leave.

The Court rejected Cendant's argument that the employee must prove she would have continued to be employed, but for the leave. The decision mirrors a majority of federal courts interpreting similar provisions of the federal FMLA and squarely places the burden on employers to justify their reinstatement denial decisions.

The case involved a senior level employee who sought reinstatement following a maternity leave. The company claimed the employee's position was eliminated during the leave because of a reorganization. The Court was unpersuaded and instead found her job existed at the time she sought reinstatement, and was being held by a temporary "placeholder."

The right to reinstatement to the same or a similar job following a leave is protected under both federal and state law, and this decision clearly places the burden on employers to prove a returning employee's job has been eliminated for reasons unrelated to the leave, and that no similar job exists.

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