

Happy Father's Day: Dad Claims He Was Terminated After Taking FMLA Leave for Bonding with Newborn Child

By Jeff Nowak on June 20, 2011



As a father of three, I tend to take interest in "feel good" stories about working parents. However, in a recent ABA Journal article, an article about a working dad caught my attention for a far different reason. The [article](#) highlighted Ariel Ayanna, who recently filed suit against his employer claiming he was terminated after taking FMLA leave following the birth of his son. [Ayanna v. Dechert LLP](#) (pdf).

The Facts

Ayanna was employed as an attorney at the Boston office of [Dechert LLP](#), an 800-attorney international law firm. According to Ayanna, he was progressing well within the firm until he took time off under the Family and Medical Leave Act. Prior to his leave, he had received two years of stellar performance evaluations and a \$30,000 bonus in the year prior to his termination.

During his second year at the firm, Ayanna's wife became pregnant with the couple's second child. This, however, was no ordinary pregnancy. Ayanna claims in his complaint that his wife suffers from borderline personality disorder, long-term post-traumatic stress disorder, major depressive disorder and general anxiety disorder. During the pregnancy, he claims that his wife's personality disorder "deteriorated to the point that she attempted suicide." Thereafter, upon birth of his child, Ayanna utilized four weeks of paid paternity leave plus additional time provided for under the FMLA to care for mom and baby.

According to Ayanna, when he returned from FMLA leave, his employer retaliated against him by incessantly criticizing and even poking fun at him for being the primary caretaker for his children. He also claims that the law firm assigned him less work as a result. On the day of his termination, Dechert gave Ayanna a negative evaluation that he claims improperly called him out for "'personal issues' [that] interfered with his meeting the employment requirements at Dechert."

Ayanna's complaint is laced with a ton of conclusory blows against his former employer, including an allegation that the firm maintains a "macho culture" where time off to attend to fatherhood and being an "engaged" dad are seen as weak and undesirable. The law firm has denied all of Ayanna's

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substantive allegations. As the ABA Journal article noted, Ayanna's case is one that leave advocates have been waiting years to press in the courts. Apparently, so was Ayanna. Notably, in the year before his termination, Ayanna published an [article](#) (pdf) entitled "Aggressive Parental Leave Incentivizing: A Statutory Proposal Toward Gender Equalization in the Workplace," in which Ayanna outlined the manner(s) in which men could take (appropriate) advantage of parental leave. Coincidence? We'll find out more during the discovery phase of the case.

Insights for Employers

This type of litigation is a bit of a wake up call for employers, since we rarely have seen a working dad wage an FMLA retaliation claim under these circumstances. However, might more like it lie ahead? For starters, employers might consider the following to ensure you have maximized your protection against potential FMLA retaliation and sex discrimination claims brought by dads in your workplace: Do you maintain different leave policies for men and women after the birth of a newborn? Do you provide greater paid maternity leave benefits than paternity leave benefits? Are men (or women) treated differently because they take the maximum leave amounts for caretaker duties at home (even if it's in that remote department in your organization that no one pays attention to)? If the answer is yes to any of these, employers are wise to address these discriminatory practices and/or confirm that the difference in benefits is applied for a non-discriminatory reason.

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