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**HRMA-PRINCETON LEGISLATIVE/LEGAL UPDATE**

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**Ian W. Siminoff, Esq.**

**FOX ROTHSCHILD LLP**

 **(973) 994-7507 [direct dial]**

**isiminoff@foxrothschild.com**

***Marrin v. Capital Health Systems, Inc.*, *2017 WL 2369910 (D.N.J. 5/31/17)***

**Facts.** Defendant hired Plaintiff as a medical laboratory technician (“lab tech”) to work in Defendant’s microbiology lab in November 2005. Following the hiring of a new lab director on December 10, 2012, Plaintiff began receiving multiple disciplinary actions. Following a dispute with a coworker on January 16, 2013, Plaintiff was issued a written warning for “inappropriate behavior toward a coworker and job abandonment.” On February 4 and 6, 2013, Plaintiff called out of work by leaving a message regarding her absence on her direct supervisor’s office voicemail. However, calling out by leaving a voicemail violated the call out policy, which required direct communication with the tech-in-charge of the lab or a supervisor. Thus, on February 12, 2013, Plaintiff’s direct supervisor issued a final written warning for the call out policy violation.

Plaintiff then met with the Human Resources (“HR”) Director on February 18, 2013, and complained about alleged deficiencies in the microbiology lab, and her last two disciplinary actions, which she claimed were unwarranted. HR conducted an internal investigation into Plaintiff’s complaints. Later that same week, on February 21, 2013, Plaintiff was disciplined for speaking inappropriately to her supervisor. Just a few days later, Plaintiff worked the weekend of February 22-23, when confidential emails and other documents disappeared from a folder in Plaintiff’s supervisor’s filing cabinet.

Plaintiff went out on FMLA leave for a month beginning February 26, 2013. While on FMLA leave, on March 18, 2013, Plaintiff had a follow-up meeting with HR to discuss the results of the internal investigation into her complaints. At this meeting, Plaintiff produced print outs of three confidential emails she claimed substantiated her claim that her supervisors conspired to interfere with her FMLA leave. However, these confidential emails were later revealed to have been among the documents taken from Plaintiff’s supervisor’s office on or around the weekend of February 22-23. An internal investigation into Plaintiff’s possession of those emails followed. Defendant’s internal investigation suggested that Plaintiff had broken into her supervisor’s filing cabinet, and taken the entire folder containing the emails and other confidential documents concerning other lab techs.

Plaintiff met with HR on March 28, 2013 to discuss the internal investigation. In this initial meeting, Plaintiff refused to answer Defendant’s questions about how she obtained the three confidential emails that she provided to HR and what, if any, other documents she had obtained. In a follow-up meeting on or about April 3, 2013 Plaintiff maintained that she had already answered Defendant’s questions and that she would not answer any further questions regarding the documents. Plaintiff returned to work after her FMLA leave on March 26, 2013. Plaintiff was then terminated on April 4, 2013, 17 days after raising her complaint about her supervisors’ interfering with her FMLA leave during her meeting with HR, and 9 days after returning from FMLA leave. Defendant based Plaintiff’s termination on her failure to cooperate with the investigation and her refusal to share how she had obtained possession of the confidential emails. Plaintiff claimed violations of the FMLA (Interference and Retaliation) and NJLAD (Retaliation and Failure to Accommodate).

**Legal Analysis**

***Did the employer interfere with the Plaintiff’s FMLA leave?***

Here, the court found that Plaintiff was never denied a benefit to which she was entitled under the FMLA. Defendant had never denied any of Plaintiff’s requested FMLA leave, and Defendant had fully complied with all work restrictions imposed by Plaintiff’s doctors upon her return from FMLA leave.

***Did the employer retaliate against the employee for taking FMLA?***

The court found that the employer met its burden of setting forth a legitimate business reason for the termination, given the employee’s failure to cooperate with the internal investigation regarding her possible stealing of confidential documents. There was also no direct evidence of retaliation because Plaintiff could not prove that Defendant could have acted against Plaintiff on the same basis at some earlier time, but failed to do so until after Plaintiff engaged in protected activity.

***Was there retaliation under the NJLAD?***

Plaintiff asserted that the taking of the documents was protected under the NJLAD. In determining whether a plaintiff’s taking of confidential documents is protected under the NJLAD, courts consider a number of factors to balance the employer’s confidentiality interest, and the plaintiff’s interest in utilizing these documents to prove her NJLAD claim. Ultimately, the court found the taking of the documents was not protected by the NJLAD, because some of the documents pertained to other employees, which were not relevant to the Plaintiff’s case, and had not been returned. The employer’s interest in protecting confidential information concerning its employees surmounted Plaintiff’s interest in utilizing the documents, as only a handful of the documents applied to her, and even those were not “smoking guns.” And even assuming the NJLAD protected Plaintiff’s taking of the confidential documents, the NJLAD still would not legally entitle a plaintiff to conceal the manner of acquiring the documents from the employer.

***Was there a NJLAD failure to accommodate?***

Here, Plaintiff argued that the lab’s call out policy, prohibiting the leaving of voice messages, impeded her ability to access her authorized disability leave. Plaintiff contended that in the event that no tech-in-charge or supervisor was available, she would be forced to appear to work sick. However, the argument failed, given that the lab director had made her direct cell phone available for call outs and the employer already had existing policies and procedures that accommodated Plaintiff.

**Conclusion**

This case, again, highlights the importance of timely discipline (which was given on several occasions prior to the taking of protected leave), and timely investigation of employee complaints. It also stands for the proposition that while an employer needs to be careful when terminating an employee on the heels of an FMLA or disability leave, such leave does not shield an employee from adverse action based upon proven misconduct.