

Employer Alert: Family Medical Leave Act Time and New Jersey Family Leave Act Time Only Run Concurrently Sometimes

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The Division on Civil Rights recently reached a settlement with a North Bergen manufacturer and importer, that learned this lesson the hard way. The Company advised an employee, who, when she had a baby, opted to take time under the federal [Family and Medical Leave Act](#) (“FMLA”), that she could not take an additional 12 weeks under [New Jersey Family Leave Act](#) (“NJFLA”) to care and bond with her newborn. In March 2018, the Company asserted, to the employee, that the time taken under FMLA ran concurrently with the time allowed under the NJFLA, adding that if she did not return to work in June 2018 they would accept her decision as her resignation.

The employee returned to work. The employee alleged that the Company then began a campaign of harassing and retaliatory behavior:

- The employee was deliberately excluded from projects and meetings;
- The Company redirected a workplace security camera so that it pointed directly at the employee’s workstation;
- The Company’s chief operating officer made a demeaning and inappropriate joke; he allegedly said, “So how old is your daughter? Six years old by now?”;
- The Company also excluded the employee from meetings and took away some job responsibilities;
- The Company retaliated against the employee by telling her she had to take a two-week business trip to India and China. The employee asked to delay the trip until she was no longer exclusively breastfeeding her newborn daughter and she supported that request with a note from her physician. The Company denied the request.

At the beginning of October 2018, the Company terminated the employee. Why? The Company said the employee was let go because she was either unable or unwilling to perform an essential job function. The employee filed a complaint regarding NJFLA interference as well as allegations that the Company illegally denied her a reasonable accommodation relating to breastfeeding and in retaliation, terminated her employment. The amended complaint also asserted a violation of the New Jersey Law Against Discrimination.

Unfortunately, the Company was wrong in its position. The time permitted under the FMLA, to recover from childbirth, is not a leave that is covered under the NJFLA. Therefore, the use of FMLA time did not exhaust any of the 12 weeks available under NJFLA. Specifically, NJFLA does not provide protected time for an individual to take care of their own serious medical conditions but only provides time for an employee to take care of their “family members,” a fairly broad definition, with serious medical conditions among other issues. Most significantly, the NJFLA permits parent bonding time of up to 12 weeks which, in many circumstances, can be in addition to the FMLA time of 12 weeks.

The Company was found liable for damages, and the settlement requires the Company to review and revise its policies and to provide appropriate anti-discrimination training.

TAKEAWAY: Employers should review their family and medical leave policies to ensure they comply with all relevant laws, including FMLA and NJFLA. If you have questions regarding the family leave laws or any other employment laws, contact [Tracy Armstrong](#) or another member of the Wilentz [Employment Law](#) Team.

Attorney

- Tracy Armstrong

Practice

- Employment Law