

Massachusetts Supreme Judicial Court Broadly Interprets Anti-Retaliation Provision of Domestic Violence Leave Statute

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On August 25, 2021, the Massachusetts Supreme Judicial Court ruled in *Osborne-Trussell v. Children's Hospital Corporation* that a nurse whose employment was terminated prior to her start date after disclosing to her employer that her abuser had violated the terms of a harassment prevention order could pursue a claim against her employer for violation of the Massachusetts Domestic Violence and Abuse Leave Act's ("DVLA") anti-retaliation and non-interference provisions. The SJC ruled that the plaintiff asserted a viable claim under the DVLA despite the fact that the plaintiff had not formally requested leave under the statute. The SJC's decision signals that Massachusetts courts will broadly interpret the employment protections afforded to victims of domestic violence, and cautions employers against adopting narrow views of those rights.

Enacted in 2014, the DVLA requires employers to provide up to 15 days of paid or unpaid leave per year to an employee who is, or whose family member is, a victim of abusive behavior, provided that the employee is using the leave for a purpose enumerated in the statute, such as seeking medical attention or appearing in court. The DVLA also prohibits employers from taking adverse action against or otherwise discriminating against employees who exercise their rights under the statute, and from interfering in an employee's exercise or attempted exercise of the same.

In *Osborne-Trussell*, the employer, a hospital, rescinded an offer of employment to a newly-hired registered nurse after she disclosed to the employer that her abuser had violated the terms of a harassment prevention order and that she had reported the violation to the police. The nurse filed a three-count complaint against the hospital in Superior Court, asserting that her termination violated the anti-retaliation and non-interference provisions of the DVLA as well as public policy. The employer moved to dismiss the complaint, arguing, among other things, that the plaintiff was not an "employee" within the meaning of the statute because she had never commenced her employment with the hospital. The Superior Court dismissed the complaint, holding that while the plaintiff was an "employee" for the purposes of the statute, she failed to allege that she sought leave from work for any of the purposes set forth in the statute or that she actually took, or had plans to take, any of the enumerated actions protected by the statute. The plaintiff appealed, and the SJC transferred the case from the Appeals Court on its own motion.

In a 5-2 decision, the SJC reversed the dismissal of the DVLA claims. The SJC agreed with the Superior Court that the plaintiff was an "employee" for the purposes of the statute. The Court reasoned that the DVLA is a remedial statute and, as such, should be liberally construed.

The Court went on to hold that, to state a claim for retaliation under the DVLA, an employee must allege that (1) the employee availed herself of a protected right under the DVLA; (2) the employee was adversely affected by an employment decision; and (3) there is a causal connection between the employee's protected activity and the employer's adverse action. The Court found that the plaintiff's complaint adequately pleads these elements. As to the first element, the Court found that the plaintiff's disclosure to the hospital that her abuser had violated the harassment prevention order and that she was cooperating with law enforcement was enough to put the hospital on notice that she might need to exercise the leave provisions of the DVLA and therefore was invoking her rights under the statute. As to the element of causation, the Court held, where the hospital terminated the nurse's employment "in an otherwise inexplicable about face" within two weeks after she invoked her rights under the DVLA, this very close temporal proximity was sufficient to suggest the requisite "but for" causation to state a claim.

Osborne-Trussell underscores the protections afforded by the DVLA for new hires and current employees alike. Although the plaintiff did

not explicitly request leave or communicate an intention to request leave, the SJC concluded that she had provided the employer with adequate notice under the statute. Employers should carefully consider the protections afforded to domestic violence victims under the DVLA when making decisions affecting the terms and conditions of employment of employees who may be protected by the statute.

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