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State and Local Resources

Firing Employee Over Jury Duty Proves Costly for Employer

February 4, 2009

By Joanne Deschenaux

A federal statute and laws in most states bar employers from firing or disciplining employees called to serve on a jury. As a recent federal case out of the District of Columbia shows, an employer that chooses to ignore this prohibition may incur considerable costs as a result, including back wages and retroactive benefits for the employee, as well as attorneys' fees and fines.

Christine Madison, who was employed by the D.C. Office of the State Superintendent of Education, lost her job as a result of serving four months of jury duty on a death penalty trial. The court hearing Madison's case found her employer had violated the Jury System Improvements Act, a federal statute that prohibits retaliation against employees who miss work for jury duty. The court ordered Madison's employer to reinstate her in her job, pay her back wages and retroactively restore all employee benefits as if she had never been terminated. It also awarded attorneys' fees, imposed a statutory penalty against the District of Columbia and permanently enjoined the District from any further Juror Act violations against Madison (*Madison v. District of Columbia*, D. D.C., No. 07- 289 (RMC), Jan. 23, 2009).

"The implications of this case are relevant to all employers when employees are summoned to jury duty," Grace Culley, an attorney with Feldesman Tucker Leifer Fidell in Washington, D.C., and counsel to Madison in the case, told SHRM Online. "It is impermissible to retaliate against employees in any way" because they are required to spend time away from work in order to fulfill jury duty.

Furthermore, employer comments expressing disapproval—such as "I don't know what we are going to do" or "This is going to hurt us"—should also be avoided. These comments are inappropriate, Culley said. "If an employee can in any way infer from the comments that his or her job is threatened, that is considered harassment and intimidation," which is explicitly prohibited under the federal law and several state laws.

Have Policy in Place

It is important for every employer to have an established practice and a policy in place that complies with federal and state law, Culley advised. Because the law is different in each state, every employer should consult with local counsel, she further recommended. The policy should reflect that jurors generally have job

protection regardless of the length of the trial. The trial in the D.C. case lasted four months. Some federal trials can last for an even longer time, Culley commented. "It doesn't matter. If the trial went on for two years, the employee still has protection," she said.

Employees can be required to provide a copy of the jury summons to their employers, Culley noted.

Whether pay is required for jury service will depend on the employee's Fair Labor Standards Act status and state laws on jury service. If an exempt employee has performed no work due to jury service in a week in which the employee engages in any work for the employer, the employee must be paid his or her full salary. There is no similar pay requirement for nonexempt employees, but state laws may require a period of jury service to be paid. An employer may offset pay with any jury service amounts paid to jurors and, if an employer so chooses, may also supplement pay during absences.

Also, an employee absent for jury service should be allowed to continue participation in the benefits plan for the duration of the leave; however, an employer may require that an employee make regular contributions (required of an active employee) to maintain benefits coverage. Paid time-off accruals may cease during leaves, although, particularly for a short leave, it may be administratively simpler to allow accruals to continue.

Treatment of Poor Performing Employees

What if you have a poor performing employee that you were about to discipline before he or she was called for jury duty? You can still take action against this employee, Culley said, but you must do so carefully. "You can still fire or discipline employees for poor performance. You just can't do it because they are called to jury duty."

As in other situations raising performance issues, "make sure that you have a good personnel record, and document progressive discipline," she suggested. "Although there is a heightened protection for employees on leave for jury duty, as long as you can show poor performance, you should be fine."

Joanne Deschenaux is SHRM's senior legal editor.