

Understaffed HR department is no excuse for flubbing FMLA compliance

Is your HR office short-handed? That could spell big trouble, especially if supervisors have to handle personnel matters without HR's help.

Short-staffed or not, make sure bosses know they must consult HR on key employment law issues.

Recent case: Magdy, who was born in Egypt and emigrated to the United States about three decades ago, worked as a cook at KFC restaurants in Lansdale and other Pennsylvania towns. He was diagnosed with chronic obstructive pulmonary disease and coronary artery disease.

In 2012, a Texas concern acquired 120 KFCs, including the ones where Magdy worked. The new owners had an HR office in Texas, where one professional was responsible for HR management for all the newly purchased stores. That covered more than 3,600 employees in several states.

The company assigned an "area coach" to oversee several Pennsylvania restaurants with roughly 400 employees, including Magdy. The area coach was responsible for onboarding all new employees, including discussing the company employee handbook. The handbook was distributed digitally, but Magdy claimed he never saw it.

Magdy would later claim the area coach made derogatory comments, including telling him that he looked "old" and should make sure he always wore his dentures because otherwise he looked older than he really was. The area coach called another employee "weak" for needing to take time off after a stroke.

Magdy began experiencing chest pains and had to use an inhaler before beginning a shift. No one shared any information on leave policies with Magdy. It wasn't until Magdy spoke with his son that he realized he might be entitled to FMLA leave.

The son contacted the area coach, who eventually emailed FMLA leave forms. The son dropped off the forms and texted the area coach to tell him. The coach didn't pick up the paperwork for a few weeks, and then left them in his car because he was "too busy" to send them to HR. (The HR staffer in Texas didn't see the forms until three years later.)

Magdy took a few weeks off, but returned to work early, fearing losing his job.

He found himself under increasing scrutiny and was terminated six months later after a spot inspection allegedly caught him switching time labels on a batch of fried chicken.

Magdy sued, alleging disability discrimination, age discrimination and interference with FMLA leave.

The court, noting that Magdy never received forms approving FMLA leave or any follow up information about his leave entitlement, said his case could go to trial. It said HR's lack of involvement in the FMLA process could be evidence that management actively discriminated by withholding important information from Magdy, interfering

with his right to take protected leave. (*Abdelmassih v. Mitra LLC*, ED PA, 2018)