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# Can Employers Terminate An Employee Because Of Vacation Photos Posted To Facebook?

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It is no secret that employers can and will make employment decisions based on employee social media postings—but will those employment decisions hold up in court? In a recent case, *Jones v. Gulf Coast Health Care of Delaware*, the Eleventh Circuit held that an employee could proceed on a claim for retaliation under the Family and Medical Leave Act ("FMLA") following his termination for posting vacation photos to his Facebook. Rodney Jones worked at Accentia Health and Rehabilitation Center of Tampa Bay. Mr. Jones underwent shoulder surgery and subsequently went on FMLA leave. At the end of the leave, Mr. Jones' doctor advised that he should extend his FMLA leave 45 days. While Mr. Jones offered to return immediately on light-duty, Accentia required a fitness-for-duty certification prior to his return and therefore required Mr. Jones to take an additional one-month non-FMLA leave. While on the extended non-FMLA leave, Mr. Jones vacationed with his family, where he visited a Busch Gardens amusement park and relatives in St. Martin. Mr. Jones posted photos from his vacations on his Facebook page, including photos of him on a beach and swimming in the ocean. When Mr. Jones was able to return to work with a fitness-for-duty certification from his doctor, Accentia confronted him with the Facebook photos and informed him that the photos indicated his health had improved and he should have returned to work much earlier. Accentia subsequently terminated Mr. Jones' employment. Mr. Jones claimed that Accentia terminated him as retaliation for taking the additional one-month leave. Mr. Jones relied on circumstantial evidence to establish a causal relationship between his additional leave and his termination—namely, the temporal proximity between the leave and termination. Accentia, on the other hand, argued that the photos on Facebook violated its social-media policy, which states that employees may be terminated if their social-media posts have an adverse effect on co-workers. Accentia argued that the photos were "gossiped" about and "created a morale issue among employees." The Eleventh Circuit held that Accentia's arguments and evidence presented were insufficient to establish a non-retaliatory motive. This was especially true given that Accentia never mentioned the social-media policy when it terminated Mr. Jones. Furthermore, a review of the social-media policy and Accentia's training materials revealed that the purpose of the policy was to "prevent employees from posting harmful or negative comments about the company's staff or facilities." It was clear that Mr. Jones' Facebook posts were wholly unrelated to the purpose of the policy, and the Court allowed the claim to proceed.

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