

# ***HR That Works!* Cases of the Month October 2004**

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## **SIXTH CIRCUIT RULES HONDA VIOLATED FMLA BY DELAYING WORKER'S RETURN**

Honda of America Manufacturing Inc. violated the Family and Medical Leave Act by not reinstating a production worker at an Ohio plant until one month after she said she was ready to return from medical leave, the Sixth Circuit rules (Hoge v. Honda of Am. Mfg. Inc., 6th Cir., No. 03-3452, 9/16/04).

[http://www.michbar.org/opinions/us\\_appeals/2004/091604/24500.pdf](http://www.michbar.org/opinions/us_appeals/2004/091604/24500.pdf)

The statute provides that an employee returning from FMLA leave "shall be entitled, on return from such leave ... to be restored by the employer" to the prior position or an equivalent position with the same conditions of employment. Writing for the appeals court, Judge Cleland says the plain meaning of this provision "is not ambiguous and, contrary to Honda's argument, will not be construed to mean 'within a reasonable time after the employee is able to return from such leave.'"

In this case, Honda argued it wasn't clear on the expected date of return after the employee's recovery from surgery, as she had twice requested an extension of FMLA leave. Unfortunately for Honda, the court felt the documents indicated a clear return to work date.

**Lesson Learned:** Job restoration is required once the employee is capable of performing the job's essential functions, which the employer can verify by requiring a medical certification, Judge Cleland says. He held that an employer illegally interferes with an employee's FMLA rights by requiring the employee to take more medical leave than is necessary. If there is any confusion regarding a return to work date make sure you have the proper documents to support your position (i.e. Send a letter expressing any confusion and ask for written clarification.) Note: *HR That Works!* users can access an entire set of letters to use for employees on FMLA related leaves.

## **WHEN AN IT SPECIALIST IS NOT EXEMPT**

In another case out of the Sixth Circuit, Martin v. Indiana Michigan Power Co. (6<sup>th</sup> Cir. No.02-2343 09/20/04)

[http://www.michbar.org/opinions/us\\_appeals/2004/082304/24293.pdf](http://www.michbar.org/opinions/us_appeals/2004/082304/24293.pdf) the court ruled that an IT employee, who was reclassified from non-exempt to exempt in a company reorganization, should not have been as he no computer certifications and no degree beyond high school. He did take a few computer training courses but it did not make him an exempt computer professional.

**Lesson Learned:** As the court stated in this opinion, just because computers are complex, doesn't mean everyone in IT rises to the standard of an exempt employee. To be exempt the employees work duties must require "highly specialized knowledge in computer systems analysis, programming, and software engineering."

Note: *HR That Works!* users please see the [Special Report: Rules on Managing Exempt Employees](#).

## **US SUPREME COURT CLARIFIES CONSTRUCTIVE DISCHARGE DEFENSE IN SEXUAL HARASSMENT CASES**

In this case the question presented was: When a hostile work environment created by a supervisor culminates in a constructive discharge, may the employer assert the affirmative defense recognized in the Faragher and Burlington cases decide in 1998? (124S.Ct.2342, decided 6/14/04)

<http://a257.g.akamaitech.net/7/257/2422/14june20041230/www.supremecourtus.gov/opinions/03pdf/03-95.pdf>

According to the case, plaintiff was barraged with sexually hostile comments from three of her supervisors. After complaining about same, she was arrested for alleged theft of own computer skills exams. Plaintiff resigned after the arrest and sued claiming constructive discharge. The Court ruled in an 8-1 opinion that to constitute a constructive discharge "the abusive working environment must be so intolerable that resignation qualifies as a fitting response." If that were the case, the defense would not be available to the employer if a tangible employment action prompted the resignation. Again, "if the plaintiff quits in reasonable response to an employer-sanctioned adverse action officially changing her employment status or situation, for example a humiliating demotion, extreme cut in pay, or transfer to a position in which she would face unbearable working conditions."

**Lesson Learned:** As seen by this case, reliance on the Faragher defense only comes into play *after* a lawsuit has been filed. What this case is saying is that if you decide to quit because of a sexual harassment problem, you must first complain to human resources, etc., so they have a chance to correct the situation...unless...a tangible employment action is involved.