



Bailey Cavalieri LLC
ATTORNEYS AT LAW

CLIENT ALERT

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OHIO PUBLIC POLICY PROHIBITS EMPLOYMENT DISCHARGE OF AN EMPLOYEE RECEIVING TEMPORARY TOTAL DISABILITY COMPENSATION UNDER OHIO'S WORKERS' COMPENSATION ACT

On October 22, 2003, the Ohio Supreme Court decided the case of *Coolidge v. Riverdale Local School Dist.* (2003), 100 Ohio St. 3d 141. The case involved a unionized elementary school teacher who was injured on October 22, 1998, in an assault by a second grade student. Coolidge returned to work the next day, but left early to seek medical attention. She called in sick the following day and never returned to work.

Initially, Coolidge applied for and was granted two thirty (30) day periods of paid assault leave. She also applied for and received temporary total disability ("TTD") under Ohio's Workers' Compensation Act. When her assault leave expired on January 15, 1999, the School Board denied a request for additional assault leave, but allowed Coolidge to use her accumulated paid leave through May 11, 1999. Thereafter, Coolidge was placed on uncompensated leave pursuant to a school board policy which provided that "uncompensated leave may be granted for a period not to exceed one (1) school year" for purposes of "restoration of h/health."

After unsuccessful attempts to gain cooperation from Coolidge regarding a return to work date, the Board's Superintendent notified Coolidge on March 23, 2000, that he intended to make a recommendation to the Board at the next regular meeting that it consider terminating her contract. Coolidge requested a hearing on the issue, which was held on August 1, 2002. The School Board approved the termination of her employment effective September 18, 2000, "due to the exhaustion of all available paid leave and her inability to perform the duties of her contract."

Coolidge appealed the School Board's decision to the Court of Common Pleas of Hancock County. The trial court reversed the School Board. On further appeal, the appellate court reversed the trial court.

In its decision, the Ohio Supreme Court relied upon judicial interpretations of other states' workers' compensation statutes to find that Ohio's public policy is violated when an employee on TTD is discharged simply because of their inability to return to work. As a result, the Supreme Court reversed the appellate court and reinstated Coolidge to her teaching position.

THE SIGNIFICANCE OF *COOLIDGE*

The *Coolidge* case makes the already confusing area of employment leave rights more difficult for employers. While the *Coolidge* case will undoubtedly spawn litigation over the limitations of the Supreme Court's ruling, employers should take the following steps immediately:

1) Actively defend applications for TTD and vigilantly monitor the medical condition of employees on TTD. Pursue medical clearance to return to work or a determination of maximum medical improvement at the earliest opportunity.

and,

2) All leave of absence policies should be evaluated in light of the *Coolidge* decision. It is clear that after *Coolidge*, application of neutral leave policies (requiring termination after a specified period of absence, regardless of the reason for the absence) are unlawful, at least as they apply to individuals on TTD who are either "at-will" or subject to discharge only for "just cause." Employers should consider rescinding or providing appropriate exemptions to such neutral leave policies. Employers should also consider policy revisions which terminate employer paid benefits upon exhaustion of all accrued FMLA and paid time off, and which obligate employees on TTD to provide regular updates regarding their ability and intention to return to work.

If you have any questions regarding the *Coolidge* decision or any other labor or employment issue, or if you would like to receive periodic labor/employment email alerts in the future, please contact the following Bailey Cavalieri LLC attorneys:

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