

HUMAN RESOURCES

By Stephanie Ramsey

HR REALITY CHECK

HR CASE
STUDY #27

Yep, the Stories are True!

Scenario: Kirkpatrick Funeral & Cremation Services consists of multiple locations in the southern United States. Duncan Kirkpatrick started the business with a single location 20 years ago. Duncan is very proud of how he has been able to grow the business over the years and the positive feedback he has received from the communities the business serves. This is a direct reflection of his highly trained and qualified staff. It has been challenging for Duncan to find and retain qualified staff, but he has diligently overcome this obstacle by providing great benefits and a wonderful work environment.

Duncan worked with a professional to create an employee handbook and procedure manuals as well as a variety of other applicable HR processes for his entire operation. Employees are introduced to these processes from the day they are hired. Currently, his staff is 35 employees consisting of both full-time and part-time positions. Recently one of Duncan's most highly rated funeral directors (Jessica) gave birth to her first child. As per their established policy, she had six weeks of paid leave. As the end of the six-week period began to approach, Duncan reached out to her congratulating her on the birth of her child and to ask her

if she had decided when she would return to work so he could make appropriate arrangements for her continued replacement.

Upon speaking with him, Jessica asked if she could extend her leave. Duncan conveyed to her that she could do so for an additional six-week period, but it would be unpaid leave (per their policies), or she could use her available PTO time which was 80 hours of time. Jessica was clearly disappointed that the additional leave would be unpaid by the company but acknowledged that she would return to work after eight total weeks of absence (six weeks paid, two weeks using her avail-

able PTO). Duncan confirmed a specific date of her return and informed her that everyone was looking forward to seeing her back at the funeral home.

The Friday before Jessica was scheduled to return, she reached out to Duncan requesting that her leave be extended an additional four weeks. She conveyed that she just could not imagine placing her small infant into childcare at that time. Duncan, while frustrated at the short notice, granted the request as Jessica was one of his most popular funeral directors. He reiterated to Jessica that the leave would be unpaid as per their policies, and she agreed that she understood.

One week before Jessica's rescheduled return, she contacted Duncan and requested accommodations be provided to allow her to continue breastfeeding her child. Duncan agreed that she would be provided a private office or secured restroom with a lounge area and the time necessary for her to use her pump. Space in the employee refrigerator to store the pumped milk would be available as well.

Jessica indicated hesitancy about how this would work for her. Duncan assured her that she was going to be provided complete privacy and indicated that he was willing to be flexible about the number of times she pumped if the total time utilized throughout the day was no more than 90 minutes. Jessica seemed reluctant about this proposal; however, Duncan convinced her that until she returned and began working again there was no way to evaluate how the suggested accommodation would work and told her he remained open to flexibility after her return.

On the Monday of her return date, Jessica arrived two hours late saying that her child had difficulty settling into the childcare environment. This was the first of a litany of issues that occurred with Jessica's return to work. The once exemplary employee became plagued with tardiness, unexcused absences, late requests for days off, and ongoing complaints that the accommodations for her breastfeeding regimen were not adequate.

Duncan spoke to her about failing to meet established guidelines regarding tardiness and absences documenting each occurrence per their policy. Each time Jessica claimed they were related to her role as a new mother. Every modification offered to accommodate her breastfeeding was met with dissatisfaction. Eventually, Duncan reached out for professional guidance to resolve this employee relationship.

WHAT ARE THE RULES?

There are four legal rules that immediately come to mind regarding this situation. The Federal Medical Leave Act (FMLA), Title VII of the Equal Employment Opportunity Commission (EEOC), ADA (Americans with Disabilities Act), and the Pregnant Workers Fairness Act (PWFA). FMLA would not be applicable because it only applies to public businesses or private businesses with more than

50 employees. Of the other three laws (all of which apply to employers with 15 or more employees), the one that is most likely to be applicable in this situation is the PWFA.

The Pregnant Workers Fairness Act, which is under the administration of the EEOC, is a new law and went into effect June 27, 2023. Employers with 15 or more employees must comply with this federal regulation, and many states have already enacted their own PWFA that is at least as strenuous as the federal rule. The PWFA is intended to protect employees regarding issues associated with pregnancy and childbirth whether they are related to discrimination or accommodations associated with pregnancy and/or childbirth. Per the House Committee on Education and Labor Report on the PWFA, examples of possible reasonable accommodations include the ability to sit or drink water; receive closer parking; have flexible hours; receive appropriately sized uniforms and safety apparel; receive additional break time to use the bathroom, eat, and rest; take leave or time off to recover from childbirth; and be excused from strenuous activities and/or activities that involve exposure to compounds not safe for pregnancy.

DID THE EMPLOYER MAKE ANY MISTAKES?

Based on the sequence of events, it appears that Duncan did a nice job of following the company's stated procedures. Further, it appears that he has been generous in providing Jessica the additional leave she requested (12 weeks total) and has attempted to make accommodations to meet her requests for returning to work.

RESOLUTION OF THE ISSUE

In speaking with the HR professional, Duncan revealed that he had heard from another employee that Jessica was very unhappy with leaving her child. It was the employee's opinion that Jessica was actively trying to be terminated so she could collect unemployment which would allow her to remain at home with her child for several more months. While this is interesting gossip, it is just gossip. Duncan was advised to act based upon his company policies and procedures.

It was important that his business run effectively and his reputation not be harmed, which was at risk with Jessica's current behavior. In reviewing the last several weeks of Jessica's work performance, there was ample evidence to terminate her for failure to comply with the company tardiness and attendance policy. Duncan had been accommodating to her request, but he could do no more without it becoming a financial burden which would be seen as an "undue hardship" under PWFA.

The final decision for Duncan was whether to terminate Jessica "at-will" or "for cause." Termination "at-will" is allowed in his state, but this choice meant he could not contest her application for unemployment benefits. Electing to terminate her "for cause" opened the door for Duncan to contest her unemployment benefits. However, there would be no guarantee that the Unemployment Commission would agree that the "for cause" reason justified denial of her unemployment benefits. After consideration, Duncan elected to terminate Jessica "at-will" and not contest her unemployment claim.

Preventive measures: This was a complicated situation. It is very frustrating for an employer to do all the right things for the right reasons and still not have a positive outcome. It is recommended that employers do their utmost to help employees clearly understand all the policies that impact them. Prior to going on medical leave, a conversation with Jessica about the term of the leave and compensation may have helped her be better prepared for her eventual return to work. However, there is no guarantee this would have resulted in her successful return to work.

If you need help untangling a complex HR situation, reach out to a professional. The answers are not always easy to find. •



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