

Updates



The Arizona Court of Appeals recently held in *Papias v. Parker Fasteners LLC*, No. 1 CA-CV 22-0775 (Ariz. Ct. App. Oct. 17, 2023), that a discharged employee could proceed with his retaliation claim against his former employer.

The employee alleged that he had been terminated when he attempted to use earned paid sick time under Arizona's Fair Wage and Healthy Family Act (the Act), A.R.S. § 23-371 et seq. In holding that the trial court erred in granting summary judgment for the employer, the court of appeals discussed the Act's rebuttable presumption of retaliation for adverse actions taken against an employee within 90 days of requesting, using, or attempting to use earned sick time.

The plaintiff started work for the employer, and the company front-loaded 40 hours of sick time, despite the employee handbook providing that sick leave accrued over time. The plaintiff took time off from work for various reasons unrelated to illness, but he was paid for those hours as sick time (which was reflected on his pay stubs).

When the plaintiff reached his one-year work anniversary, the employer again front-loaded sick time, and the practice of paying the plaintiff for these non-illness-related absences as sick leave continued.

Despite ostensibly having no remaining sick time, the plaintiff was absent for three days and texted his supervisor each day that he was feeling ill and would not be in to work. (He had also previously told his supervisor he was going to be out of town and absent one of those days.) When the plaintiff returned to work, he was discharged, and the company stated that it no longer needed him and asserted "productivity issues."

The trial court granted summary judgment to the employer and dismissed the plaintiff's suit on the grounds that there was no evidence of unlawful retaliation, "largely due to the fact that [plaintiff] did not have accrued sick leave at the time of his termination." The trial rejected the plaintiff's other claims, and he appealed.

Court of Appeal's Ruling

The Arizona Court of Appeals reversed the trial court's grant of summary judgment to the employer. The court of appeals reviewed the Act's statutory presumption, which provides that "[t]aking adverse action against a person within ninety days of a person's engaging in the foregoing activities shall raise a presumption that such action was retaliation, which may be rebutted by clear and convincing evidence that such action was taken for other permissible reasons." The court of appeals found that it was undisputed that the plaintiff had used sick time within 90 days of his termination, and thus, the Act's rebuttable presumption applied. The court of appeals held that it was a question for a jury whether the employer had produced the necessary "clear and convincing" rebuttal evidence that it terminated the plaintiff for reasons other than his exercise of rights under the Act.

The court of appeals also rejected the argument that Papias was not attempting to exercise a right under the Act when he sent text messages about being sick because he knew or should have known that he had no sick leave available at that time. In so ruling, the court of appeals relied in part on what it found to be confusing and contradictory information on his pay stubs and in the payroll portal accessible to the plaintiff, and on inconsistencies between the company's sick time policies stated in its employee handbook and its actual practices.

The court of appeals further held that the plaintiff texting his supervisor that he was ill and would not be coming to work constituted an attempt to use sick time under the Act, even though Papias did not directly refer to sick time.

Takeaways

Arizona employers should review their paid sick leave policies to ensure compliance with the Act (including with respect to their pay stubs and employee payroll portals). Further, Arizona employers should be aware of the rebuttable presumption set forth in the Act. Arizona employers with questions about sick pay compliance should contact experienced counsel.

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