

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LINDA GIBBS,

Plaintiff,

Case No: 13-13476

Honorable Laurie J. Michelson

v.

VOITH INDUSTRIAL SERVICES,  
INC., et al.

Defendants.

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**JURY INSTRUCTIONS**

JURY INSTRUCTION NUMBER 25:

Another claim made by the plaintiff is based on federal law known as the Family and Medical Leave Act, referred to as the FMLA. Under that law, an eligible employee shall be entitled to a total of 12 workweeks of leave during any 12-month period because of a serious health condition that makes the employee unable to perform the functions of the position of such employee. Federal law prohibits an employer from discharging, discriminating in any way, and retaliating against an employee for exercising her rights under the FMLA.

The Plaintiff Linda Gibbs claims that the Defendants, Voith Industrial Services, Inc. and Ralph Iardi, retaliated against her for taking leave for her knee surgeries from December 9, 2011 through May 23, 2012 when she was reassigned to the Annex.

The Plaintiff seeks damages against the Defendants under the theory that they retaliated against her for taking FMLA leave.

The Defendants deny the Plaintiff's claim and contend that their actions were not motivated by the Plaintiff's leave-taking.

JURY INSTRUCTION NUMBER 26:

In order for Plaintiff Linda Gibbs to prove that Defendants Voith Industrial Services and Ralph Ilardi retaliated against her because she took leave, Plaintiff must establish the following elements by a preponderance of the evidence:

- (1) she engaged in an activity protected by the Act;
- (2) that this exercise of her protected rights was known to the defendants;
- (3) that defendants thereafter took an employment action adverse to the plaintiff; and
- (4) that there was a causal connection between the protected activity and the adverse employment action.

The parties agree that the Plaintiff's leave from work from December 9, 2011 through May 23, 2012 was protected activity under the FMLA and that the Defendants knew that she took protected leave at that time. As mentioned earlier, there is a dispute whether the Plaintiff's job reassignment was an adverse employment action and whether the Defendants' actions were caused by the Plaintiff's leave-taking.

Your verdict will be for the Plaintiff if you find that the assignment to the Annex was an adverse employment action and was motivated at least in part by the Plaintiff's exercise of her rights under the FMLA. Your verdict will be for the Defendant if you do not find that the Plaintiff proved that the assignment to the Annex was an adverse employment action or was not motivated at least in part by her exercise of FMLA rights.

JURY INSTRUCTION NUMBER 27:

A “materially adverse” action is any action by the employer that is likely to discourage a reasonable worker in the Plaintiff’s position from exercising her rights under the FMLA.

JURY INSTRUCTION NUMBER 28:

In order to prove a causal connection between the protected activity and the adverse employment action, the Plaintiff must prove that the reasons the Defendants gave for her reassignment were not the true reasons, and that the true reason for the adverse action was that she took a medical leave. In other words, the Plaintiff must prove by a preponderance of the evidence that she would not have been reassigned to the Annex had she not taken FMLA leave.

JURY INSTRUCTION NUMBER 29:

If you find that Defendants retaliated against the Plaintiff in violation of the Family Medical Leave Act, you may award damages.

Damages are intended to make the Plaintiff whole for:

a. any wages, salary, employment benefits, or other compensation denied or lost to the Plaintiff by reason of her reassignment to the Annex.

The Court instructs you that, in the event that you choose to award damages, you should not award any lost wage damages for the Plaintiff after the day she quit her employment.

From Case:

2:13-cv-13476-LJM-RSW Gibbs v. Voith Industrial Services, Inc. et al

Additional Keywords:

Family Medical Leave Act