Doss Law Firm

354 Waterman Circle
Fayetteville, AR 72701

Telephone: (479) 521-2606 Fax: (479) 521-2600

June 30, 2009

Ms. Clara Brown
2111 W. Berry St.
Fayetteville, AR 72701

RE: Blue Ribbon Media, Inc.

Dear Ms. Brown:

My name is Brant New, an attorney for the Doss Law Firm. I have recently been assigned to your file and have had an ample opportunity to review the facts that were presented during your last visit to our firm. Although we have not formally met, I can imagine the stress that you must be going through in this difficult time. With that said, I am fairly confident that you have a legitimate claim against Blue Ribbon Media, Inc. for wrongful termination under the Family and Medical Leave Act. Thus, it is my hope to offer you any and all assistance that may be necessary in securing the relief to which you are entitled. Assuming, at this point, you still wish to pursue legal action in this matter, there are a number of options available to you, including the option to initiate a lawsuit against Blue Ribbon. However, you must be aware that each option is accompanied by certain inherent risks and benefits, risks and benefits that must be carefully weighed to ensure that the course of action you choose will provide you with the best possible outcome. Before considering the best course of action to pursue, let us first review the crucial facts of your case analyzed under the controlling law which governs them.

Before we begin, however, you must understand that the legal opinion that I provide in this letter is based solely upon my analysis of the facts reported below, analyzed under the current state of governing law. Any discrepancies in these facts, or any change in the governing law, may drastically alter my opinion in this case. As a result, it is extremely important for you to verify the accuracy of the factual account that I have provided below. Please notify me, as soon as possible, if you find any errors or omissions so that I may quickly remedy the situation.

Background

Shortly after your return to Arkansas in December of 2006, following your graduation from UCLA, Blue Ribbon Media, Inc. hired you for a full-time receptionist position in charge of performing a number of general clerical duties. The company, which employs well over 100 employees, owns and operates a number of television and radio stations throughout Arkansas and Oklahoma. As an employee of Blue Ribbon, you were entitled to a number employment benefits. Among these benefits were six days of paid sick leave and ten days of paid annual leave each calendar year, all which you subsequently used by the end of each year. This year, as of March 1st, you had only one day of sick leave and one day of annual leave remaining after having used most of your paid leave in the first couple of months of the year.

On Monday, March 2nd, having one day of annual leave remaining, you decided to plan a trip to California, a trip which included an interview with The Walt Disney Company. As a result of your decision, you promptly informed your boss, Julie James, via email of your intention to use annual leave on the Friday, March 6th. Unbeknownst to you, she was on vacation at the time you sent her the email. Nonetheless, you made the trip to California where you attended your interview and enjoyed time with your boyfriend, Jimmy Bland. Due to bad weather conditions on Sunday, however, your return flight was delayed until early Monday morning, March 9th.

During the flight home, you became very ill exhibiting signs of a high fever as well as uncontrollable shaking. As a result, you attempted to call Ms. James via the airline's onboard telephone to inform her that you would not be able to make it into work that day. Having reached her voicemail, you decided not to leave a message because you were unsure about the reliability of the machine. Instead, you called one of the account representatives directly and informed him that, because you were "deathly ill," you would not be able to make it into work that day. Subsequently, you went straight to bed upon arriving home.

Later that day, while sick in bed, you came across a broadcast on CNN reporting that a number of individuals who had recently stayed at the Disneyland Resort had been diagnosed with the deadly H1N1 virus. These individuals, three of which had subsequently died, were exhibiting symptoms similar to your own. Moreover, health officials were urging people to stay away from individuals who had possibly been infected with the deadly virus. Alarmed that you had contracted the H1N1 virus, you immediately contacted Blue Ribbon and left a message with Ms. James' personal assistant, stating that you were "seriously ill and possibly contagious." You also mentioned that you were not sure when you would be able to return to work. You made no attempt at this time to contact Ms. James directly.

Three days later, on the morning of March 12th, you realized that your condition had not significantly improved. As a result, you contacted your doctor to schedule a visit for later that day. During this visit, the doctor informed you that your condition was likely the result of the common flu; he prescribed bed rest and plenty of fluids. As a precautionary measure, he also referred you to the lab for blood work in order to determine whether or not you had, in fact, been infected by the H1N1 virus. Once the visit had concluded, you returned home and sent an email to Ms. James to keep her apprised of your current situation. The email noted that you were being referred to the lab for blood work, and that the results, along with the initial referral, were to be forwarded by your doctor directly to Ms. James.

The next morning, Friday, March 13th, you received a phone call from the doctor's office informing you that your blood work had tested negative for H1N1, and that you could return to work once your fever subsided. Following this advice, you returned to work on the following Monday, and after having been fever-free over the weekend, only to find out that your belongings had been boxed up. Enquiring into the matter, you were shocked to learn from Ms. James that you had been terminated from the company for excessive absences.

Analysis

Blue Ribbon Media, Inc.'s decision to terminate you for excessive absences will likely be adjudged to violate your protected rights under the Family and Medical Leave Act (FMLA). In determining the applicability of the FMLA to an employee's claim for wrongful termination, a number of initial requirements must be met before a violation can be established. First, an employee asserting such a claim must be an "eligible employee" as defined under the FMLA. In addition, to be held liable, an employer must be a "covered employer"—i.e. an employer to which the FMLA applies. Lastly, the covered employer must have infringed upon a protected right, a right that is granted to "qualifying" eligible employees under the provisions of the FMLA.

It is almost certain that you will qualify as an "eligible employee" under the FMLA. An "eligible employee" is one that (i) has been employed by his or her covered employer for at least 12 months, (ii) has logged more than 1,250 hours in the preceding twelve month period prior to taking leave and (iii) has been employed at a worksite with 50 or more employees employed by his employer. Given that you have worked full-time for Blue Ribbon—a company employing well over 100 employees—for more than two years, it is highly unlikely that they would challenge your status as an "eligible employee."

In Addition, it is clear that Blue Ribbon qualifies as a "covered employer" under the FMLA. A "covered employer" is any person who (i) engages in commerce or in an industry affecting commerce and (ii) employs more than 49 employees for a total of 20 or more full calendar workweeks in the current or preceding calendar year. As a multimedia broadcasting company operating media outlets throughout Arkansas and Oklahoma, Blue

Ribbon is clearly engaged in an industry that, at minimum, affects commerce. Moreover, given the scope of Blue Ribbons' operations, it is highly likely that the company employs enough full-time employees to qualify as a covered employer under the FMLA. Thus, it is very unlikely that Blue Ribbon would challenge their status as a "covered employer."

In addition to meeting the requirements above, it is also likely that Blue Ribbon has infringed upon one of your protected rights under the FMLA. Infringement occurs when (i) covered employers deny eligible employees the full exercise of their rights under the FMLA and (ii) eligible employees are "qualified" under the FMLA to assert the rights that they are being denied.

It is quite obvious that Blue Ribbon has denied you, as an eligible employee, the full exercise of a protected right under the FMLA. The FMLA grants all eligible employees returning from sanctioned leave the right to return to the same position as the one held prior to taking leave, or at least one that is sufficiently equivalent. In this case, Blue Ribbon denied you this right by terminating you before you returned from leave. Thus, you have been denied the full exercise of a right granted to you by the FMLA.

Moreover, it is likely that you were "qualified" under the FMLA to assert the right denied to you by Blue Ribbon—i.e. the right to return to the position you held prior to taking leave. In order to "qualify" for the rights granted under the FMLA, eligible employees must (i) meet one of the qualifying conditions that entitle them to FMLA leave and (ii) provide their covered employers with adequate notice of leave.

First, it is likely that you provided Blue Ribbon with adequate notice of leave under the FMLA. Adequate notice of leave requires timeliness along with the sufficient production of relevant information.

Notice for unforeseeable FMLA leave is timely when it is given as soon as is practical given the particular circumstances of the case. Consequently, as a general rule, failing to give notice prior to taking leave does not preclude an employee from invoking FMLA leave. Since you contacted your employer immediately upon learning of your illness, it is likely that the notice of leave was timely. Moreover, you attempted to stay in contact with your employer by sending follow-up information as soon it became available. For example, you sent an email to Ms. James after you had visited with your doctor apprising her of your current situation. This lends credence to the assertion that notice was timely.

Notice for unforeseeable FMLA leave is sufficient when it provides the employer with enough information to reasonably determine that the requested leave may be subject to the FMLA. Calling in sick, however, without more, is not sufficient. In this case, you did not simply call in sick. The facts suggest that you provided enough information to reasonably invoke the FMLA. For instance, you noted that you were "deathly ill" and "possibly contagious." Moreover, you informed your employer that you had been sent to the lab for blood work. Thus, it seems that the notice given was sufficient; however, you

must be aware that Blue Ribbon will argue that it did not provide enough information to reasonably determine that the leave requested was possibly subject to the FMLA.

Second, it is likely that you have met one of the qualifying conditions entitling you to FMLA leave. Any employee suffering from a serious medical condition is entitled to leave under the FMLA. A "serious medical condition," for purposes of the FMLA, is an illness or impairment that involves either impatient care or continuing treatment by a health care provider.

Now, given the facts of the current case, it is clear that Blue Ribbon will be able to successfully argue that your medical condition did not involve inpatient care. However, it is likely that your condition did involve some type of continuing treatment. "Continuing treatment by a health care provider" is defined as a period of incapacity in which a person cannot work, or perform regular activities, as the result of a serious health condition, a condition that lasts for at least three full consecutive days and requires some type of continuing treatment from a heath care provider.

Given the facts in the case, it is likely that you were incapacitated for more than three full consecutive days because you were unable to work. You became seriously ill on Monday morning, March 9th, an illness that could have reasonably been linked to a deadly virus. Three days later, your condition had not significantly improved resulting in a visit to your health care provider. Although these facts suggest that you were likely incapacitated for purposes of the FMLA, however, Blue Ribbon may try to argue that you were never incapacitated simply because your doctor never stipulated that you were unable to work.

Along with being incapacitated, it is likely that the treatment plan you were following constituted a continuing treatment under the FMLA. Continuing treatment may include (i) two or more visits to a health care provider within 30 days of the initial incapacity or (ii) one visit to a health care provider followed by a regimen of continuing treatment under the supervision of a health care provider. Although, as a general rule, bed rest and fluids do not, by themselves, constitute "a regimen of continuing treatment," these remedies may constitute continuing treatment when coupled with examinations that are performed to rule out other serious health conditions.

Again, given the facts of the case, it is highly likely that you made two visits to a health care provider as part of your continuing treatment. On Thursday, March 12, you visited your doctor to have your illness assessed. As a result of this visit, you were referred to the lab for blood tests. Thus, it seems that the lab referral will likely constitute a second visit to a health care provider under the FMLA, although Blue Ribbon will adamantly deny this. On the other hand, it seems almost certain that you made, at least, one visit to a health care provider followed by a regimen of continuing treatment under the supervision of a health care provider. The prescribed bed rest, along with fluids, was accompanied by an examination that was being conducted to rule out a serious health condition. Thus, given that you were incapacitated and receiving continuing treatment, it

is likely that your condition was a serious medical condition under the FMLA, a condition that involved continuing treatment from a health care provider.

Given that you met the notice requirement and suffered from a serious medical condition which qualified you for FMLA leave, it appears that you were qualified to assert your FMLA rights. Furthermore, it appears that Blue Ribbon infringed upon your rights granted by the FMLA because they denied you a right, under the FMLA, that you were qualified to assert. As a result, because of Blue Ribbon's infringement of your FMLA rights, you seem to have met the initial requirements for the purposes of asserting a successful claim against Blue Ribbon for wrongful termination under the FMLA.

Consequently, you should be able to recoup any loses, sanctioned by the FMLA, that have resulted from your termination from Blue Ribbon. FMLA sanctioned losses include, but are not limited to, the loss of wages as well as any equitable relief that the court deems appropriate.

Recommendations

Given the facts of your case, analyzed under the current state of governing law, it appears that you have a legitimate claim against Blue Ribbon for wrongful termination under the FMLA. Thus, if this case went to trial, it is likely that you would end up on the winning side. Moreover, the monetary relief awarded by juries at trial is generally far greater than the relief secured through other means of resolution. On the other hand, trials are very costly, stressful and time-consuming. Moreover, they are unpredictable and highly adversarial in nature. Thus, you should carefully weigh the risks and the rewards when choosing the best avenue to pursue.

In addition to trial, you should consider entering into settlement negotiations or some type of mediation with Blue Ribbon. Although the relief secured through these resolutions is generally lower, they are far more predictable and are likely to succeed, considering the negative publicity that trials usually generate. Moreover, a trial is still an available option if negotiations or mediation fall through. Depending on the dynamic of your past relationship with the Blue Ribbon and the type of the relief you seek, these forms of resolution may actually be the more practical alternative.

Please contact me before July 21, 2009 so that we may discuss your options in further detail; otherwise I will assume you have decided against pursuing this matter.

Sincerely,

Brant New
Attorney at Law