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Former Dechert associate blames firm's macho culture in suit alleging retaliation for his FMLA leave

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A former associate in Dechert's Boston office has sued the law firm, claiming it fired him because he used Family and Medical Leave Act time to care for his children and mentally ill wife. His complaint alleges "the culture for men at Dechert is a 'macho' one."

On Dec. 14, Ariel Ayanna filed suit in the District of Massachusetts, alleging the firm retaliated against him for taking leave time under the FMLA. His complaint also alleges the firm violated a Massachusetts sex discrimination law and the Americans With Disabilities Act's bar on discrimination against someone due to an association with a disabled person.

The suit, *Ayanna v. Dechert*, asks the court to award lost wages and benefits, damages for emotional distress, punitive damages plus attorney fees and costs.

In the complaint, Ayanna states he worked in Dechert's financial services practice group from Sept. 11, 2006 until Dec. 17, 2008. He claims he received a positive review during his first year at Dechert and a \$30,000 bonus for 2007. During his second year at Dechert, his wife became pregnant with their second child and "her condition deteriorated to the point that she attempted suicide," according to the complaint.

The complaint states that Ayanna's wife suffers from borderline personality disorder, long-term post-traumatic stress disorder, major depressive disorder and general anxiety disorder.

After the child was born, Ayanna used four weeks of paid paternity leave plus time allowed under the FMLA. He was fired four months after returning from FMLA leave.

Ayanna claims he was derided for using the leave time and being the primary caretaker for his children. He claims he was criticized for his lack of commitment to the firm, even though family obligations never interfered with his work.

According to the complaint, when he returned from paternity and FMLA leave, the firm retaliated by withholding work, which reduced his billable hours. On the day he was fired, the firm gave Ayanna a negative performance review that he claims falsely alleged that "his 'personal issues' interfered with his meeting the employment requirements at Dechert."

Ayanna claims he "was available at all times by phone, Blackberry, and email to do substantive work," when he was at home.

According to the complaint, "the culture for men at Dechert is a 'macho' one which praises and encourages male associates and partners to fulfill the stereotypical male role of ceding family responsibilities to women."

"In this culture, caregiving is for wives of male attorneys and tolerated only for female attorneys," states the complaint.

Ayanna's lawyer, Rebecca Pontikes of Boston's Pontikes & Swartz, said the case is important because men often "don't feel that they have the support to take on equal caretaking role."

"Mr. Ayanna's wife had a breakdown, so there wasn't any choice for him, but taking as much leave as Mr. Ayanna did was unheard of there," Pontikes said.

Pontikes said there are a fair number of FMLA cases brought by men. She also said a 2007 U.S. Supreme Court ruling in *Nevada Department of Human Resources v. Hibbs* supports the idea that "the stereotypical role for women couldn't exist without a stereotypical role for men." The Hibbs court held that the 11th Amendment didn't give states, in this case Nevada, immunity from FMLA claims.

Then-Chief Justice William Rehnquist wrote that "stereotypes about women's domestic roles are reinforced by parallel stereotypes presuming a lack of domestic responsibilities for men."

"Because employers continued to regard the family as the woman's domain, they often denied men similar accommodations or discouraged them from taking leave," Rehnquist wrote. "These mutually reinforcing stereotypes created a self-fulfilling cycle of discrimination that forced women to continue to assume the role of primary family caregiver, and fostered employers' stereotypical views about women's commitment to work and their value as employees."

Ayanna's other federal claim, the association discrimination claim based on his wife's disability, is a challenging one to win, but Pontikes said the facts are strong in this case.

"A lot of case law is summary judgment rulings for employers, but I think Mr. Ayanna has got it here," Pontikes said. "This is what the law was for."

Pontikes said that, as the case wends its way through the system, Ayanna is "working towards an advanced degree in the legal field." She declined to give additional details but said he "won't be in private practice."

Dechert spokesperson Beth Huffman said, "We feel the claims are baseless."

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