

**HR Weekly Podcast**  
**09/17/2014**

Today is September 17, 2014, and welcome to the HR weekly podcast from the State Human Resources Division. Today's topic concerns poor performance and the Family and Medical Leave Act, or FMLA.

In March 2008, BT Americas, Inc., a technology services firm in northern Virginia, hired Nadine Ranade as a consultant. Ranade was placed on a performance improvement plan, or a PIP, to help her improve her work performance in September 2010.

Subsequently, Ranade notified BT of a need for FMLA leave and submitted the required documentation on September 22, 2010. Her healthcare provider stated that she could work no more than four hours per day, five days per week, effective immediately. BT began accommodating her condition the next day by restructuring her hours to a part-time schedule of 8:00 a.m. to 12:00 p.m. Problems arose, however, when one of Ranade's clients needed her to be available on a flexible basis to meet its needs. BT and the client attempted to reach an agreement on her schedule but were unsuccessful. Therefore BT informed Ranade on October 5, 2010, that she could (1) take continuous FMLA leave as permitted by the Act or (2) return to work full-time if her physician determined that her condition would allow her to do so. BT's decision was driven by the company's need to track Ranade's time, ensure compliance with the FMLA, and limit the company's liability. Ranade elected to return to her doctor to seek approval to return to full-time work instead of taking continuous FMLA leave. Ranade provided BT with a doctor's note clearing her to return to work full-time on October 6, 2010, thus ending eligibility for FMLA leave. She returned to work full-time with the same salary and benefits she had before going on leave, and BT continued to accommodate her ongoing physical therapy appointments.

After Ranade returned to full-time status, BT received numerous complaints from clients, and she was asked to leave several accounts. On March 31, 2011, Ranade was terminated for poor performance. She filed a lawsuit on September 18, 2012, containing a nonspecific "willful violation" of the FMLA alleging that BT violated the FMLA by denying her request for FMLA leave, giving her negative performance evaluations, placing her on a PIP, and terminating her. She claimed that BT denied her the benefits of the FMLA by (1) refusing to let her work the 20 hour per week flexible schedule she preferred, (2) requiring her to work a 20-hour "block" schedule, (3) informing her on October 5, 2010, that her reduced schedule could not be accommodated, and (4) not offering her alternate options. BT filed a motion for pretrial dismissal, which the trial court granted. Ranade appealed this decision.

The United States Fourth Circuit Court of Appeals evaluated Ranade's claim under two theories of FMLA liability: the retaliation prong and the interference prong. FMLA retaliation claims usually follow an analytical structure that requires the employee to show that (1) he or she engaged in protected activity, for example took or requested FMLA leave; (2) the employer took an adverse action against the employee, for example, poor performance reviews, placement on a PIP, or termination; and (3) the adverse action was causally connected to the protected activity. While Ranade satisfied the first two requirements, she could not satisfy the third. Her claim that the events were associated was undermined by (1) the approximate five months gap between her FMLA leave and her termination, (2) her placement on a PIP before her request for FMLA leave, and (3) BT made a number of efforts to help her improve her performance and terminated her only after those efforts failed. Therefore, the Fourth Circuit found that the trial court correctly dismissed Ranade's FMLA retaliation claim. To establish an FMLA interference claim, Ranade had to show that she (1) lost compensation or benefits by reason of the violation, (2) endured other monetary losses as a direct result of the violation, or (3) experienced a loss in employment status that could be resolved through appropriate equitable relief such as reinstatement or a promotion. Ranade's interference claim failed on several grounds. It was clear that BT accommodated Ranade's condition during the period she qualified for a reduced work schedule under the FMLA and that she returned to work full-time with the same salary and benefits she had prior to taking FMLA leave. BT also continued to accommodate her medical appointments after she returned to work. Evidence showed that her return to full-time work was of her own decision as opposed to taking continuous FMLA leave, which was an option offered by the company. Finally, the Fourth Circuit noted that Ranade's termination was unrelated to her FMLA leave and that she remained employed and was provided full benefits until the time of her termination. Thus, her FMLA interference claim was unsuccessful.

Detailed information regarding the Family and Medical Leave Act can be found at [www.dol.gov](http://www.dol.gov). Thank you.