

DAILY BUSINESS REVIEW

JUSTICE WATCH John Pacenti

KEY RULING IN FAVOR OF FIRED PREGNANT WOMAN

Alissa Cellucci struggled to get pregnant with her husband for two years, undergoing three rounds of fertility treatment.

When the in vitro fertilization resulted in a pregnancy, she couldn't wait to tell her co-workers in the human resources department at Nova Southeastern University. She even told her boss.

In retrospect, Cellucci thinks that was a mistake.

The 30-year-old Davie woman is suing the private university, claiming she was fired as an administrator because she told her superiors of plans to take maternity leave under the Family and Medical Leave Act.

"Women should not be afraid to tell their employers they are pregnant, and they should be able to feel secure they can keep their jobs," Cellucci said.

The FMLA entitles an eligible employee to take up to 12 weeks of unpaid leave in a 12-month period for the birth or adoption of a child or serious health condition. Vacation and accrued leave time can be combined with FMLA leave.

Cellucci's attorney said her client and other women in her position shouldn't feel like they have to keep a secret from their colleagues or employers, turning a time of joy into one of suspicion.

"Any woman who has trouble trying to conceive, the minute you know it you tell anybody and everyone within earshot. Happiness overcomes you," said attorney **Dale Morgado**, a partner at Feldman Fox & Morgado in Miami who is representing Cellucci.

Cellucci won a big battle already in her lawsuit when U.S. District Judge **Jose E. Martinez** in Miami denied Nova's motion to dismiss the litigation because she invoked her right to take leave before she was eligible for leave.

The issue hinged on the timing of her leave notification and the starting date of her leave.



MELANIE BELL

Alissa Cellucci, with her 8-month-old son Jacob and her husband, Ryan, says she's proud of doing something for women's rights in South Florida: "I think other people will benefit from what I've been through."

Cellucci had worked for five months at Nova when she learned she was pregnant in November 2009. She would have been qualified to take FMLA leave on her due date but was short of the school's required 1,250 hours of employment when she told her supervisors of her plans.

"This gives women some extra protection of not losing their jobs when they let their employer know they are pregnant. Some women are very nervous about that," Morgado said.

Martinez said in a March 25 ruling that it made no sense to "require employees to give notice but not affording the protection for this assertion of their rights under the statute."

Attorney **Richard A. Beauchamp**, a partner with Panza Maurer & Maynard in Fort Lauderdale, represents the university on the issue. His motion cited several similar cases where courts ruled in favor of the employer.

He said the university doesn't comment on pending litigation.

Even though Martinez's ruling is case-specific, Morgado said it can be cited in similar cases of pregnant women who claim their employers have retaliated against them.

"This gives women some extra protection of not losing their jobs when they let their employer know they are pregnant. Some women are very nervous about that," Morgado said.

Labor and employment defense attorney **Robin Taylor Symons**, a partner at Gordon & Rees in Miami, notes Cellucci's case is in an early stage and all Martinez's ruling does is



J. ALBERT DIAZ

Dale Morgado, a partner at Feldman, Fox & Morgado in Miami who is representing Cellucci.

allow one count to move forward.

The order indicates an employee has a right to request FMLA leave before they become eligible without fear of retaliation.

The judge said this was clearly Congress' intent in passing law, noting lawmakers stated, "The lack of employment policies to accommodate working parents can force individuals to choose between job security and parenting."

MATERNITY LEAVE AROUND THE WORLD

Country	Leave	Pct. of wages
Algeria	14 weeks	100
Australia	18 months	100
Brazil	120 days	100
Cameroon	14 weeks	100
Canada	17 weeks	55
Costa Rica	4 months	100
Italy	5 months	80
Japan	14 weeks	60
Netherlands	16 weeks	100
Paraguay	9 weeks	50
Russia	70 days	100
South Africa	4 months	60
United States	12 weeks	0

ELIGIBILITY

Symons explained, "It doesn't wind the clock back and restart the clock in terms of eligibility, but it does impact the employee-employer relationship."

She noted that even if the ruling is not binding, other lawyers representing pregnant clients claiming FMLA discrimination will rely on it.

Pregnancy discrimination in the workplace is becoming more prevalent, said Fort Lauderdale employment attorney **Donna Ballman** who is not involved in the case.

"It has become in my view more blatant," she said. "I'm seeing a lot more pregnancy discrimination, and I don't know why. It seems like employers are just firing pregnant employees and saying, 'Damn the consequences.'"

She said employers need to think twice about firing a pregnant employee because of the cost of retraining and the horrible message it sends to its staff.

"If they think other employees aren't watching how they treat people, then they are sadly mistaken," Ballman said.

She said employers who discriminate against pregnant women often will use the "suddenly stupid" defense.

"It's a classic. People who were stellar employees suddenly start getting written up," she said. "All of a sudden they become stupid."

In Cellucci's case, the reason was even more suspicious.

She was called into her supervisor's office and fired Feb. 25, 2010. Cellucci was told she had worked her maximum hours for the year, which according to university policy was 1,000 hours from her start date. The 1,250-

hour rule applied to leave eligibility.

When Cellucci asked to see the policy, the university refused, saying it had an obligation to her since she had been terminated. Cellucci said she was even more taken back because her supervisors were women who she thought would be more understanding.

The university even fought Cellucci on her unemployment benefits, she said.

"I wasn't sure what I was going to do. I didn't know if I could get another job being four months pregnant," she said.

Her family coped financially. Cellucci's husband, Ryan, runs a food and beverage service at Sun Life Stadium.

Ballman said employers count on pregnant women, seniors and disabled people not to fight back.

"You are talking about people who are at their most vulnerable," she said. "They don't have the resources or the energy to fight."

Cellucci's case "certainly spotlights an issue where the perception is American employers are less protective of pregnant employees than their European counterparts," Symons said.

Cellucci now has her hands full with her 8-month-old son, Jacob, but she vows to continue to fight her firing.

"I'm really proud doing something for women's rights in South Florida, and I think other people will benefit from what I've been through," she said.

John Pacenti can be reached at (305) 347-6638.

Case Name: Alissa Cellucci v. Nova Southeastern University

Case Number: 10-cv-62557

Filed: Dec. 30, 2010

Court: U.S. District Court, Miami

Judge: Jose E. Martinez

Allegations: Cellucci claims she was fired as an administrator from Nova Southeastern's human resources and payroll department after seeking maternity leave.

Defense: Cellucci not eligible to make claim because she did not qualify for Family Medical Leave Act.

Details: Martinez ruled a pregnant woman who has not satisfied an employer's policy on length of employment at the time of a leave request is still protected from retaliation under the FMLA.



FELDMAN, FOX
& MORGADO, PA
ATTORNEYS AT LAW

www.FloridaTrialAttorneys.net