

Paid Leave Can Be A Lawful Option When An Employee Is Facing Criminal Charges

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Paid administrative leave for an employee who is charged with a crime is not a materially adverse employment action for purposes of proving an employment discrimination case, according to a recent federal appellate court order. The 10th Circuit's decision in [Benavides v. City of Oklahoma City](#), is a useful reminder for employers that thorny legal issues may arise when an employee is accused of criminal wrongdoing. The Benavides case illustrates that while an employer cannot prevent an employee from filing a charge of discrimination or lawsuit with respect to employment decisions, a well-reasoned decision-making process can go a long way to support the employer's defense that its actions were not discriminatory.

Plaintiff Roland Benavides was a police officer who brought claims of discrimination, harassment, and retaliation under the Americans with Disabilities Act and the Family and Medical Leave Act. During plaintiff's employment, a co-worker brought forth concerns that the plaintiff was involved in illegal gambling, and the plaintiff was summoned before a grand jury and subsequently indicted. Per City policy, he was put on paid administrative leave while the criminal matter was pending. Meanwhile, the city investigated the plaintiff's claims that co-workers had subjected him to workplace harassment because he took a leave of absence due to various medical conditions.

In the disability discrimination and retaliation case, the plaintiff argued that the administrative leave was an adverse action, an argument that the appellate court rejected. The appellate court also noted that even assuming the plaintiff had been able to show that paid leave was materially adverse, the plaintiff failed to establish that the City's reason for placing him on paid leave -- because he faced charges of illegal gambling -- was pretextual.

This case confirms that a paid leave of absence is among the options open to employers who are faced with an employee who is under arrest. Because each case is fact-specific, and because some states (including Illinois) have laws that restrict the use of arrest information in employment decisions, it is prudent to seek the advice of counsel when faced with an employee who is under arrest or indictment, both to deal with the immediate job-related concerns and to lay the groundwork for defense against potential claims.

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