

WOMAN ALLEGES HR DIRECTOR SUGGESTED LAWSUIT AGAINST FORMER EMPLOYERS



Employees often file a lawsuit against their former bosses after they've been terminated. Sometimes the suit is suggested by co-workers or family. But would you ever sue your previous employers on the advice of the HR Director? That's exactly what a woman alleges happened to her. Lisa Makowski worked in the Marketing Department for a law firm, SmithAmundsen, in Chicago. She'd been employed at the firm for approximately two-and-a-half years when she requested maternity leave. Due to an increase in her blood pressure, she was placed on bed rest for the final month of her pregnancy. She telecommuted for three weeks until her FMLA (Family and Medical Leave Act) leave commenced. She gave birth a week later. The Executive Committee of SmithAmundsen convened for its yearly appraisal of the firm and to determine possible changes in the staff. In reorganizing the Marketing Department, the committee decided to eliminate Makowski's position. The Director of Human Resources, Molly O'Gara, was told in an email that Makowski "doesn't fit into [the company's] culture." O'Gara was assigned the task of conferring with legal counsel with regards to the employee's termination. While still on pregnancy leave, Makowski received a phone call and was informed that her position at the firm was being terminated. Makowski claims that, when she went into the office that same day to gather her belongings, she was told by O'Gara in private that she had been fired due to her pregnancy and having taken medical leave. The HR Director told her that people had been "discriminated against" for those very reasons, citing a former employee as a casualty of such discrimination. Additionally, O'Gara suggested to Makowski that "it might be a good idea to speak with a lawyer." O'Gara denied in court having made any such suggestion to Makowski. Makowski filed suit against SmithAmundsen, claiming pregnancy discrimination, interference with FMLA rights, violation of her right to a bonus, and employer retaliation. O'Gara's alleged statements were not admitted into a district court, as the court ruled that the HR Director's "job responsibilities were not related to the decision to terminate Makowski" and that "O'Gara was not involved in the decision-making process." The court believed that O'Gara's "statements concerning Makowski's termination were not admissible as an admission by a party-opponent" – in other words, they were hearsay. Without the statements, the court ruled in favor of the firm. An appeals court, however, disagreed. It believed that, since O'Gara had been asked to confer with counsel concerning Makowski's firing, the decision to terminate her position had not necessarily been finalized. Consequently, O'Gara was considered part of the "decision-making process." The HR Director's denial of the statements made to Makowski is insignificant for the appeals court, as a jury will decide whether or not the alleged statements have merit. The appeals court reversed the ruling against O'Gara's statements, reversed the district court's decision, and remanded the case for trial.