

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
NORTH CAROLINA

Becky Mussat-Whitlow v. Winston-Salem State University

Mussat-Whitlow · No. 1:25-cv-00263 · Decided March 10, 2026

SUMMARY

The opinion addresses Winston-Salem State University’s motion to dismiss claims arising from Becky Mussat-Whitlow’s termination. The court holds that sovereign immunity bars the plaintiff’s North Carolina Equal Employment Practices Act claims, while concluding that her FMLA interference claim is inadequately pleaded and her FMLA retaliation claim is plausibly alleged based principally on the temporal proximity between her leave and termination. The motion to dismiss is granted in part and denied in part.

CASE DETAILS

COURT	United States District Court for the Middle District of North Carolina
WRITING FOR THE COURT	Thomas B. Schroeder
JURISDICTION	United States District Court for the Middle District of North Carolina
DECIDED	March 10, 2026
DOCKET	1:25-cv-00263
DISPOSITION	other
PROCEDURAL POSTURE	Defendant moved to dismiss the amended complaint under Federal Rules of Civil Procedure 12(b)(1), 12(b)(2), and 12(b)(6). The court dismissed the NCEEPA claims and the FMLA interference claim, but allowed the FMLA retaliation claim to proceed.
STANDARD OF REVIEW	On a facial Rule 12(b)(1) challenge, the court accepts well-pleaded factual allegations as true and asks whether they plausibly invoke subject-matter jurisdiction, disregarding mere legal conclusions. Under Rule 12(b)(6), the court separates legal conclusions from factual allegations, assumes the well-pleaded factual allegations are true, and determines whether they plausibly show entitlement to relief.
PRECEDENTIAL VALUE	Unknown; federal district court memorandum opinion
PARTIES	Becky Mussat-Whitlow v. Winston-Salem State University

TOPICS

family and medical leave act

retaliation

sovereign immunity

motions to dismiss

civil procedure

PRACTICE AREAS

employment law

civil rights

civil procedure

sovereign immunity

QUESTIONS PRESENTED

1. Whether North Carolina's statutory waiver for certain state-employee claims waived Winston-Salem State University's sovereign immunity from the plaintiff's NCEEPa wrongful-discharge claims.
2. Whether the alleged purchase of liability insurance waived the university's sovereign immunity from the NCEEPa claims.
3. Whether the amended complaint plausibly alleged FMLA interference based on the university's alleged failure to permit or protect anticipated leave for eye surgery.
4. Whether the amended complaint plausibly alleged FMLA retaliation based on the plaintiff's termination 28 days after returning from protected FMLA leave.

HOLDINGS

1. North Carolina General Statutes section 143-300.35 does not waive Winston-Salem State University's sovereign immunity from NCEEPa claims because the statute expressly identifies the Fair Labor Standards Act, Age Discrimination in Employment Act, Family and Medical Leave Act, and Americans with Disabilities Act, but not the NCEEPa.
2. The alleged purchase of liability insurance by Winston-Salem State University did not waive the university's sovereign immunity from the plaintiff's NCEEPa claims.
3. The amended complaint failed to plausibly allege FMLA interference because the plaintiff did not allege that she notified the university of her intended eye-surgery leave, including its anticipated timing and duration.
4. The amended complaint plausibly alleged FMLA retaliation because the plaintiff engaged in protected FMLA activity, suffered the adverse action of termination, and alleged a causal connection based on her termination 28 days after returning from FMLA leave.

KEY QUOTATIONS

“The Court will not imply waiver where it clearly does not exist.” (8)

“Thus, Plaintiff fails to plausibly allege interference because she never gave Defendant notice of her intended leave.” (12)

“Thus, Plaintiff plausibly alleged her retaliation claim.” (16)

FACTUAL BACKGROUND

Plaintiff worked for Winston-Salem State University from approximately 1999 until her termination on January 30, 2023, serving as Director of Institutional Assessment and Research from 2009 onward. She took FMLA

leave for a torn meniscus and foot condition and later took a second FMLA leave while hospitalized for a mental-health condition and diagnosed with post-traumatic stress disorder. After returning from the second leave, she alleged that she was treated differently and that the university terminated her 28 days after her return; she also alleged that she intended to take additional FMLA leave for eye surgery but had not notified the university of the timing or duration of that leave.

PROCEDURAL HISTORY

Plaintiff filed suit in the Superior Court of Forsyth County, North Carolina, asserting claims under the North Carolina Equal Employment Practices Act and the Family and Medical Leave Act. Defendant removed the action to the Middle District of North Carolina on April 7, 2025, and moved to dismiss. The court granted the motion in part and denied it in part, dismissing Counts One through Three and the FMLA interference claim with prejudice while permitting the FMLA retaliation claim to proceed.

DISPOSITION

other

CASES CITED

- Evans v. B.F. Perkins Co., 166 F.3d 642, 647 (4th Cir. 1999)
- Adkins v. United States, 923 F. Supp. 2d 853, 857 (S.D. W. Va. 2013)
- Welch v. United States, 409 F.3d 646, 651 (4th Cir. 2005)
- Medina v. United States, 259 F.3d 220, 223 (4th Cir. 2001)
- Roach v. West Virginia Regional Jail & Correctional Facility Authority, 74 F.3d 46, 48 (4th Cir. 1996)
- Port Authority Trans-Hudson Corp. v. Feeney, 495 U.S. 299, 304-06 (1990)
- A.M. v. Demetro, No. 2:22-00421, 2024 WL 218139, at *1 (S.D. W. Va. Jan. 19, 2024)
- Smith v. Lanier, No. 1:20CV750, 2022 WL 903140, at *4 (M.D.N.C. Mar. 28, 2022)
- Hutto v. South Carolina Retirement System, 899 F. Supp. 2d 457, 466 (D.S.C. 2012)
- Beckham v. AMTRAK, 569 F. Supp. 2d 542, 547 (D. Md. 2008)
- Cornell v. West Virginia Division of Corrections & Rehabilitation, No. 2:24-CV-00120, 2024 WL 4368991, at *3 (S.D. W. Va. Oct. 1, 2024)
- Skaggs v. Western Regional Jail, No. 3:13-3293, 2014 WL 66645, at *4 (S.D. W. Va. Jan. 8, 2014)
- Evans v. United States, 105 F.4th 606, 615 (4th Cir. 2024)
- Kerns v. United States, 585 F.3d 187, 192 (4th Cir. 2009)
- Adams v. Bain, 697 F.2d 1213, 1219 (4th Cir. 1982)
- Saunders v. Jividen, No. 2:21-cv-00250, 2024 WL 3307849, at *3 (S.D. W. Va. May 24, 2024)
- Ashcroft v. Iqbal, 556 U.S. 662, 678-79 (2009)
- Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 554-55, 570 (2007)
- King v. Rubenstein, 825 F.3d 206, 214 (4th Cir. 2016)
- Tennessee v. Lane, 541 U.S. 509, 517 (2004)

- Board of Trustees of the University of Alabama v. Garrett, 531 U.S. 356, 363 (2001)
- Peck v. United States Department of Labor, 996 F.3d 224, 229 (4th Cir. 2021)
- Atascadero State Hospital v. Scanlon, 473 U.S. 234, 241 (1985)
- In re Secretary of Department of Crime Control & Public Safety, 7 F.3d 1140, 1145 (4th Cir. 1993)
- McLean v. Patten Communities, Inc., 332 F.3d 714, 720 (4th Cir. 2003)
- Smith v. First Union National Bank, 202 F.3d 234, 247 (4th Cir. 2000)
- Howell v. North Carolina Central University, No. 1:16CV576, 2017 WL 2861133, at *13 (M.D.N.C. July 5, 2017)
- McCray v. Maryland Department of Transportation, 741 F.3d 480, 483 (4th Cir. 2014)
- Alston v. North Carolina A&T State University, 304 F. Supp. 2d 774, 783-84 (M.D.N.C. 2004)
- Sossamon v. Texas, 563 U.S. 277, 284-85 (2011)
- Bachelder v. American West Airlines, Inc., 259 F.3d 1112, 1122 (9th Cir. 2001)
- Strickland v. Water Works & Sewer Board, 239 F.3d 1199, 1206 (11th Cir. 2001)
- Adams v. Anne Arundel County Public Schools, 789 F.3d 422, 427 (4th Cir. 2015)
- Nevada Department of Human Resources v. Hibbs, 538 U.S. 721, 738-39 (2003)
- Rhoads v. FDIC, 257 F.3d 373, 378, 382-83 (4th Cir. 2001)
- Hannah P. v. Coats, 916 F.3d 327, 346 (4th Cir. 2019)
- Dotson v. Pfizer, 558 F.3d 284, 295 (4th Cir. 2009)
- Brushwood v. Wachovia Bank, N.A., 520 Fed. App'x 154, 157-58 (4th Cir. 2013)
- Hawkins v. BBVA Compass Bancshares, Inc., 613 Fed. App'x 831, 841-42 (11th Cir. 2015)
- Fry v. Rand Construction Corp., 964 F.3d 239, 244 (4th Cir. 2020)
- Yashenko v. Harrah's NC Casino Co., LLC, 446 F.3d 541, 551 (4th Cir. 2006)
- Hoyle v. Freightliner, LLC, 650 F.3d 321, 337 (4th Cir. 2011)
- Burlington Industries, Inc. v. Ellerth, 524 U.S. 742, 761 (1998)
- Burlington Northern & Santa Fe Railway Co. v. White, 548 U.S. 53, 68 (2006)
- Jensen-Graf v. Chesapeake Employers' Insurance Co., 616 Fed. App'x 596, 598 (4th Cir. 2015)
- Waag v. Sotera Defense Solutions, Inc., 857 F.3d 179, 192 (4th Cir. 2017)
- Roberts v. Glenn Industrial Group, Inc., 998 F.3d 111, 114, 123 (4th Cir. 2021)
- Francis v. Booz, Allen & Hamilton, Inc., 452 F.3d 299, 300, 302, 309 (4th Cir. 2006)

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