

To be eligible, the employer must have 50 or more employees who have worked for the employer at least 12 months and 1,250 hours in the last year. The FMLA requires that employers reinstate employees to their former job or an equivalent job at the end of the leave, and must maintain any group health insurance coverage under the same conditions of coverage and cost-sharing arrangement as if the employee were working during the leave.⁵⁸

Massachusetts Medical Leave Act

Besides the Family Medical Leave Act, residents of Massachusetts (the state in which Papageorge filed her lawsuit) receive additional protection from the Massachusetts Maternity Leave Act (MMLA). The MMLA requires that an employee on leave be restored to her previous or a similar position upon her return to employment following leave. That position must have the same status, pay, length of service credit, and seniority as the position the employee held prior to the leave.⁵⁹

The MMLA also requires that a maternity leave not affect an employee's right to receive vacation time, sick leave, bonuses, advancement, seniority, length of service credit, benefits, plans or programs for which she was eligible at the date of her leave, and any other advantages or rights of her employment incident to her position. Such maternity leave, however, need not be included in the computation of such benefits, rights and advantages.⁶⁰

An employee returning from the leave does not have greater rights in terms of benefits or work conditions over other employees who have been working while the prior employee was on leave. The employer is also not required to reinstate a returning employee to her previous position if other employees of the same caliber and length of service have been laid off during her leave period due to economic conditions or operation changes.

Nothing in the MMLA shall be construed to affect any bargaining agreement, employment agreement, or company policy providing benefits that are greater than, or in addition to, those required under the statute. An employer may grant a longer maternity leave than required under the MMLA. However, if the employer does not intend for full MMLA rights to apply to the period beyond eight weeks, the employer must communicate it clearly to the employee in writing prior to the commencement of the leave.⁶¹

Papageorge's "Condition"

Cynthia Papageorge began working for Mothers Work, Inc. in 1997 as a district manager for stores in Massachusetts, Connecticut, and Rhode Island.⁶² In October of 1999, Papageorge was 37 weeks pregnant with her first child when Mothers Work vice president, Frank Mullay, inspected four of Papageorge's stores unannounced. Mullay found deficiencies in the stores' housekeeping, made several references to Papageorge's pregnancy and even suggested that Cynthia could not meet her job requirements as a result of her "condition."

The lawsuit claims that within several days of the random store inspection, Mullay ordered Papageorge's supervisor, Jan Dowe, to fire Papageorge on the grounds that Papageorge was pregnant. In an affidavit, Dowe stated she refused to fire Papageorge after company officials told Dowe it would be illegal to let Papageorge go. Dowe met with Mullay and informed him of the illegality of his proposal. He responded with, "There are ways of getting around the law."⁶³ Six months later, Papageorge was released after requesting medical leave for a shoulder injury, which was unrelated to her pregnancy. Dowe was also fired for inadequate job performance after taking maternity leave.

Mark Itzkowitz, Papageorge's lawyer, has claimed, "It seems that pregnant women are subject to termination by virtue of their pregnancy. That position was made known in meetings

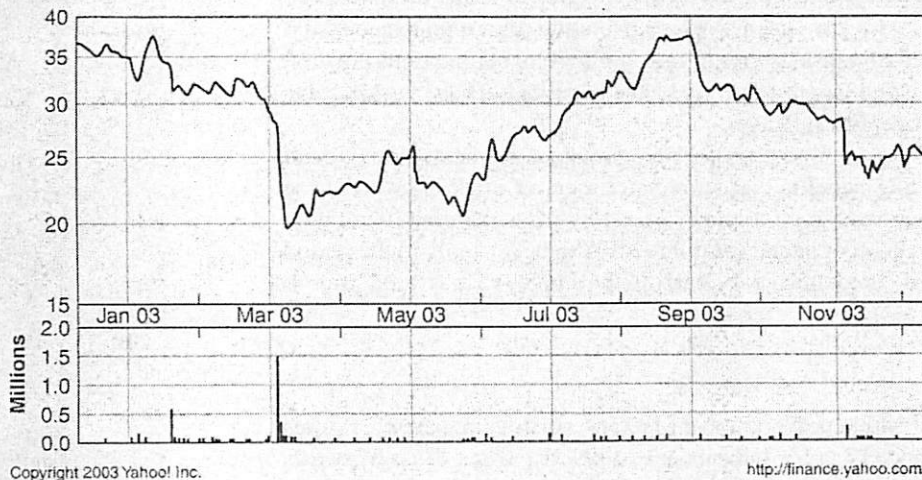
with managers at Mothers Work. The other women [from the other three lawsuits] were terminated for the same reason."⁶⁴

Discussion Questions

1. What facts in this case appear to be the most important to you?
2. Who are the key stakeholders in this case? How will a verdict for or against Papageorge affect the parties?
3. What actions (if any) should Mothers Work, Inc. take? What message should the company send to the public? Who is Mothers Work's target audience?
4. What are the critical issues of this case? Which issues should Mothers Work confront first?
5. Since there is no Corporate Communications department, who should deliver Mothers Work's message? What media should Mothers Work use to convey its position?
6. This lawsuit has not received much media attention (since the original filing of the suit). Why do you think this is the case?

Appendix A

MOTHERS WORK INC.



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FIGURE 4-5

Notes

1. Bill Pennington and Dave Anderson, "Some at Augusta National Quietly Seek a Compromise," *The New York Times*, September 29, 2002, Section 8, pp. 1, 6.
2. Letter from Martha Burk to William Johnson, June 12, 2002. Available from <http://www.womensorganizations.org/news/augustaletter.pdf>.
3. Letter from William Johnson to Martha Burk, July 8, 2002. Available from <http://www.womensorganizations.org/news/augustaletter.pdf>.
4. Press Release: "Statement by Hootie Johnson," *The Golf Central Newsroom*, July 9, 2002, http://www.womensorganizations.org/news/position04_press.htm.

5. Letter from Douglas and Sa from h
6. Letter from 2002, organ
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