News for School Law Clients

FYI

April 2016

Individual Liability under the Family and Medical Leave Act

A recent case from the Second Circuit involving individual liability for supervisors under the Family and Medical Leave Act ("FMLA") reinforces the importance of thorough FMLA training for all supervisors.

The FMLA's definition of "employer" includes "any person acting, directly or indirectly, in the interest of a covered employer to any of the employees of the employer." 29 U.S.C. § 2611(4)(A)(ii)(I); 29 C.F.R. § 825.104(d). Although FMLA suits against employers as entities are still the norm, some courts have become more accommodating toward lawsuits naming supervisors as defendants in their individual capacities.

Graziadio v. Culinary Institute of America et al, No. 15-888-cv (2nd Cir. Mar. 17, 2016)

Cathleen Graziadio, an employee of the Culinary Institute of America (CIA), sued the CIA, her supervisor, and the CIA's Human Resources Director for interference and retaliation under the FMLA. Graziadio took FMLA leave to care for her son, who had been hospitalized due to undiagnosed Type 1 diabetes. On the same day that she returned to work, her other son broke his leg playing basketball and needed surgery, so she had to take another leave to care for him. In both instances, Graziadio promptly informed her supervisor, Loreen Gardella, that she would need leave to care for her son.

During her second leave, she corresponded with Gardella about her expected return date and asked whether there was any further documentation that she needed to submit. Gardella reached out to Shaynan Garrioch, the CIA's Director of Human Resources, who replied to Graziadio and told her that her FMLA paperwork was deficient and that she would need to provide new documentation before she was allowed to return to work. What followed was what the court described as "an excruciating exchange" in which Graziadio asked to return to work, while Garrioch refused to discuss the matter further over e-mail and attempted to schedule a face-to-face meeting. The meeting never took place because the Garrioch and Graziadio were unable to agree to a time and date, and communication between the parties broke down. Soon after, the CIA sent Graziadio a letter announcing that she had been terminated for abandoning her position.

Graziadio filed a complaint in the Southern District of New York bringing claims against the CIA, Gardella, and Garrioch for interference and retaliation under the FMLA. The lower court dismissed Graziadio's claims against her supervisor and the HR Director in their individual capacities because it found that they did not qualify as "employers" subject to liability under the FMLA.

On appeal, Graziadio challenged the court's determination that Garrioch was not an "employer" for the purposes of the FMLA, and the Second Circuit Court of Appeals reversed the lower court on this issue.

The "Economic Reality Test"

The court adopted the "economic reality test" used under the Fair Labor Standards Act ("FLSA") to determine whether an individual qualifies as an "employer" for FMLA purposes. [Many of the definitions for the FMLA are taken from the FLSA.] The economic reality test instructs courts to consider "whether the alleged employer possessed the power to control the worker[] in question, with an eye to the 'economic reality' presented by the facts of each case." In making this determination, courts generally look to factors such as the power to hire, fire employees, supervise, affect conditions of employment, determine the rate and method of payment, maintain employment records, and control work schedules.

The court characterized the overarching question presented as whether the Director of Human Resources "controlled plaintiff's rights under the FMLA." It determined that she did. Although Garrioch did not have ultimate authority to terminate Graziadio, she did "play an important role in the decision" and "held substantial power" over the termination. In addition, the court found that she exercised enough control over Graziadio's schedule and conditions of employment with respect to her FMLA leave to be considered an employer. Garrioch reviewed the FMLA paperwork, determined its adequacy, controlled Graziadio's ability to return to work and under what conditions, and was Graziadio's primary point of contact regarding her FMLA leave.

Because the Second Circuit found that the HR director could be considered an "employer" under the economic reality test, Graziadio's FMLA claim against Garrioch in her individual capacity was allowed to progress to trial.

Graziadio, While Not Binding in Wisconsin, May Lead to Increased Claims

The *Graziadio* case was decided by the Second Circuit Court of Appeals and is not binding on federal courts in Wisconsin or on the Seventh Circuit Court of Appeals, whose rulings govern Wisconsin federal courts. Although neither the Supreme Court nor the Seventh Circuit have yet decided a case on the issue of individual liability under the FMLA, district courts within the Seventh Circuit have been receptive to such claims, as have other Circuit Courts of Appeals. See, e.g., *Shockley v. Stericycle, Inc.*, No. 13-cv-01711, (N.D. Ill. Sept. 19, 2013); *Hayberger v. Lawrence Cty. Adult Prob. & Parole*, 667 F.3d 408 (3rd Cir. 2012); *Modica v. Taylor*, 465 F.3d 174 (5th Cir. 2006); *Darby v. Bratch*, 287 F.3d 673 (8th Cir. 2002). Courts have also ruled individuals can be considered an employer under the FLSA. So this is not an area to be ignored.

While the *Graziadio* decision is not binding law in Wisconsin, it may lead to an increase in FMLA claims against supervisors in their individual capacities, as plaintiff's lawyers see an opportunity to "test the waters" by bringing expanded claims. District employees should not despair, however, because, although being named as a defendant in an individual capacity is certainly a hassle, employees sued for actions taken within the scope of their employment are generally eligible for reimbursement under Wisconsin's governmental indemnification statutes, Wis. Stat. sections 895.35 and 895.46.

In light of the potential for broader FMLA claims, districts would be wise to confirm that all supervisors have been trained on the policies in place to respond to requests for family and medical leave. This may also be a good time for a review of the district's insurance policy as it relates to FMLA claims. In addition, districts should ensure that those administering FMLA leave have access to legal counsel to help handle more complex FMLA dilemmas before they turn into lawsuits.

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