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EMPLOYER LAW BLOG

FMLA Breach: HR Director May Be Liable As An “Employer”

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A recent federal circuit court of appeals decision shows a growing change in how courts define an “employer” for the purpose of establishing liability under the Family and Medical Leave Act ("FMLA").

A payroll administrator was fired shortly after she took leave to care for her sons and engaged in a dispute about the need for valid documentation regarding leave.

The payroll administrator then sued her employer, supervisor, and the HR director alleging interference and retaliation under the FMLA, and discrimination under the Americans with Disabilities Act (“ADA”).

The payroll administrator initially took leave to care for her son suffering from diabetes and then she needed to take an additional leave a few weeks later when her second son broke his leg. During the second leave her employer took issue with the paperwork supporting the leave and refused to allow the payroll administrator to return until she provided new documentation.

Communication became strained between the payroll administrator and the HR director, and the HR director refused to allow the payroll administrator to return until new documentation was provided. The employer ultimately fired the payroll administrator for abandoning her job despite the payroll administrator repeatedly stating her desire to return to work, and requesting clarification on what medical documentation was needed to classify the leaves for her sons.

After the District Court dismissed the payroll administrator’s lawsuit she filed an appeal to the 2nd Circuit Court of Appeals (“2nd Circuit”). The 2nd Circuit determined that the ADA claim based on alleged associational discrimination was properly dismissed; however, the appeals court joined three other federal appeals courts in ruling that the “economic reality” test used under the Fair Labor Standards Act “(FLSA”) is an appropriate tool to decide if an individual manager may be deemed an “employer” under the FMLA.

An individual may be held liable under the FMLA only is he or she is an "employer". The FMLA defines an "employer" as "any person" who "acts, directly or indirectly in the interest of the employer" toward an employee. This definition tracks the definition used in the FLSA; therefore, the 2nd Circuit chose to become the fourth circuit court to apply the economic reality test to analyze individual liability.

Under this test, courts consider several "non-exclusive and overlapping" factors which "include whether the alleged employer (1) had the power to hire and fire employees; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records."

Courts applying this test in a FMLA context are assessing the economic reality of an employment relationship by inquiring whether the alleged employer "controlled in whole or in part plaintiff's rights under the FMLA." The District Court dismissed the FMLA claim against the HR director; however, the 2nd Circuit found that a reasonable jury could conclude that the HR director had "sufficient control" over the payroll administrator's employment to be held individually liable under the FMLA.

Examples of such control include the following: (1) the HR director played an important role in the decision to fire the payroll administrator; (2) the HR director controlled the payroll administrator's schedule and conditions of employment, at least regarding her return from FMLA leave; and (3) other supervisors testified that the HR Department exclusively handled any employee's return to work after FMLA leave.

Neither party presented evidence that the HR director exercise control over the payroll administrator's rate and method of payment. However, on the question of whether the HR director "controlled" the payroll administrator's rights under the FMLA the 2nd Circuit found there was "ample evidence to support the conclusion" since the HR director: (a) reviewed her FMLA paperwork, (b) determined its adequacy, (c) controlled her ability to return to work and under what conditions, and (d) sent nearly every communication regarding her leave and employment.

It is important for employers to know that based upon the above outlined facts a rational jury could find that the HR director exercised sufficient control over the payroll administrator's employment to be subject to liability as an employer under the FMLA. This case highlights how no one factor will form the basis of alleged FMLA interference since the evidence will be analyzed based on the totality of the circumstances. It is highly recommended that employers, especially HR directors and professionals, partner with an employment attorney when they are conducting FMLA related decisions in order to diminish instances of liability for FMLA breach.

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