Client ALERT

March 22, 2002

U.S. Supreme Court Strikes Down DOL Regulation That Punishes Employers Who Give More Generous Leave Benefits: *Regulation Is Contrary to Statute Where It Automatically Grants 12 Weeks Additional FMLA Leave When Employer Fails to Give Prospective Notice That Leave Is Covered by the FMLA*

This week the Supreme Court struck down a Department of Labor ("DOL") regulation that gave employees the right to up to 12 additional weeks of leave if their employer failed to give them individualized notice that a given leave of absence would be counted as leave under the Family and Medical Leave Act ("FMLA"). In a 5 to 4 decision, the Court invalidated the challenged regulation as manifestly contrary to the FMLA requirement that employees prove actual impairment of their rights and resulting prejudice in order to recover under the statute. *See Ragsdale v. Wolverine Worldwide, Inc.*, No. 00-6029, ___ U.S. ___, 2002 WL 416011 (March 19, 2002).

The FMLA provides covered employees with the right to take up to 12 weeks of unpaid leave in a 12-month period for certain family or health-related purposes. The regulation at issue required employers to notify employees at the commencement of a leave of absence that the leave qualifies as FMLA leave; if the employer failed to give the notice, the employer would forfeit the right to count any of the leave taken against the employee's right to 12 weeks of leave. Accordingly, the regulation provided employees with a potential bonus of up to 12 additional weeks of leave after notice is given, even when the employee suffered no prejudice from the employer's failure to give the notice.

Striking down what it characterized as the punitive aspect of the regulation, the Court reasoned that the regulation upset the balance between the interests of employees and employers set by Congress and risked discouraging employers from granting more generous benefits, a result Congress plainly did not intend.

The Court's decision is somewhat narrow. It did not decide whether DOL could impose some lesser penalty for an employer's failure to give notice or whether a penalty requiring the furnishing of additional leave would be proper if an employee was prejudiced as a result of not receiving notice. Thus, while the decision relieves employers from draconian penalties in certain instances, it should not result in a change of practice in administering leaves. Employers should continue to designate leaves as FMLA covered as soon as practical.

Background

Tracy Ragsdale had been employed by Wolverine Worldwide, Inc., for eleven months when she was diagnosed with cancer and requested a medical leave of absence. Wolverine granted her request but did not notify Ragsdale that her leave would be considered FMLA leave. Under Wolverine's policies, Ragsdale was entitled to up to 30 weeks of unpaid leave – well beyond the 12 weeks mandated by the FMLA. Throughout her leave, Wolverine kept her position open, maintained her health benefits, and paid her premiums for the first six months of her leave. After 30 weeks of leave, however, Ragsdale was not able to return to work, and Wolverine terminated her employment. Wolverine never notified Ragsdale that it was designating her leave as FMLA leave.

Ragsdale sued Wolverine claiming the Company had violated the FMLA in refusing her request for 12 weeks additional leave after she had exhausted her 30 weeks of Company-provided leave, and cited the DOL regulation requiring prospective notice that leave would be considered FMLA leave. 29 CFR § 825.700(a). The district court granted Wolverine's motion for summary judgment, and the Eighth Circuit affirmed.

The Opinion

Delivering the opinion of the Court, Justice Kennedy affirmed summary judgment for Wolverine, holding that the DOL regulation in question was manifestly contrary to the language of the statute and Congressional intent in enacting the FMLA. Specifically, the regulation created an irrefutable presumption that the failure to designate leave as FMLA leave in advance impaired the employee's FMLA rights and entitled the employee to an additional 12 weeks of leave. The majority found that this feature of the regulation was contrary to the statutory requirement that an employee prove

impairment of his or her FMLA rights and resulting prejudice in order to recover any relief. 29 U.S.C. § 2617. Under the position advanced by *Ragsdale* and DOL, an employee would be awarded an additional 12 weeks of leave, even if the employee would not have behaved any differently had he or she received timely notice that leave taken would count as FMLA leave. The Court noted that the categorical penalty imposed by the regulation bore no relation to any harm suffered by the employee and therefore, was contrary to the remedial design of the statute.

Further, the majority observed that the regulation had the effect of punishing employers who provide more generous benefits than those required by the FMLA by denying any credit for leave taken before the notice. The Court noted that the regulation at issue appeared in a section addressing employers who provide more generous benefits, 29 C.F.R. §825.700, and would likely discourage employers from continuing those benefits. This result conflicted directly with Congress's explicit direction that the FMLA not be construed "to discourage employers from adopting or retaining leave policies more generous than any policies that comply with the requirements under [the FMLA]." 29 U.S.C. §2653. In invalidating the regulation, the Court commented that "[t]echnical rules and burdensome administrative requirements . . . might impose unforeseen liabilities and discourage employers from adopting policies that varied much from the basic federal requirements."

Finally, the majority was not persuaded by DOL's argument that the regulation was justified by the need for administrative convenience. The Court noted that Congress required a case-by-case analysis before an employee can recover under the Act, and the DOL did not have authority to circumvent that requirement.

While the majority expressly declined to rule on the validity of the individualized notice requirement set forth in the regulations, 29 C.F.R. §825.208(a), the Court noted that the FMLA only requires general notice to employees through posting and imposes up to a $100 fine for failure to provide general notice.

Recommendation

Employers should continue to notify employees when they intend a leave to be treated as FMLA leave. The Court left open the question of whether the regulatory requirement of individualized notice is enforceable and the four dissenting justices presumably would enforce that requirement. Further, in rejecting the extreme position of the current regulation, the majority noted in dicta that a penalty provision that was directly related to any harm caused by a failure to provide notice may be reasonable. It remains to be seen whether DOL will attempt to devise a more targeted remedial provision.

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