Understanding Your Legal Rights Under The Family Medical Leave Act – Unlawful Interference And Individual Liability

March 17, 2016 • Legal Updates & Insights

Ilmicrofono Oggiono / Flickr / CC BY 2.0

The Family Medical Leave Act ("FMLA") provides eligible employees with up to 12 weeks of job-protected, unpaid leave for certain family and medical reasons, including leave to care for a newborn child or to attend to the serious medical condition of the employee or a member of the employee's immediate family.

Are you an eligible employee under the Family Medical Leave Act?

An eligible employee is one who has worked for a private employer for at least 12 months, has worked for at least 1,250 hours over the previous 12 months and works at a location where at least 50 employees are employed by the employer within 75 miles. FMLA leave is considered job-protected because an employee is entitled to be reinstated to the same position or an equivalent position. 29 C.F.R. 825.214. An "equivalent position" is one that has equivalent benefits, pay, and other terms and conditions of employment as the position the employee held before the leave.

Prohibited Acts under the FMLA

The Family Medical Leave Act makes it unlawful for an employer to interfere with an employee's rights under the FMLA (an "interference" claim) or to take an adverse action against an employee because he or she took FMLA leave (a "retaliation" claim). See 29 U.S. C. § 2615 (a). An interference claim usually occurs before an eligible employee takes FMLA leave, or at the point of returning from leave, while a retaliation claim is the result of events after an eligible employee returns to work.

The Standard for Interference Claims

On March 17, 2016, the Second Circuit in Graziadio v. Culinary Institute of America, No. 15-cv-888 (2d Cir. Mar. 17, 2016) formally adopted standards to evaluate FMLA interference claims. The Second Circuit held that an employee asserting an interference claim must establish:

(1) that she is an eligible employee under the FMLA;
(2) that the defendant is an employer as defined by the FMLA;
(3) that she was entitled to take leave under the FMLA;
(4) that she gave notice to the defendant of her intention to take leave; and (5) that she was denied benefits [such as being denied leave or job reinstatement], to which she was entitled under the FMLA.

Id. In comparison to a retaliation claim that requires an employee to prove that an adverse action was taken because of the exercise of FMLA rights, an employee asserting an interference claim needs only to

show that he or she was denied entitled benefits, including certain notice and procedural protections. For example, an employer's failure to respond to an employee's questions about FMLA leave and paperwork requirements "may itself run afoul of the FMLA's explicit requirement that employers 'responsively answer questions from employees concerning their rights and responsibilities under the FMLA," including, inter alia, their obligations regarding medical certification." Id. (citing 29 C.F.R. § 825.300(c)(5)). It is important for an employee to understand his or her FMLA rights in order to determine whether there has been unlawful interference.

The Standard for Individual Liability

The Second Circuit in Graziadio also clarified the standard to determine whether an individual can be personally liable under the Family Medical Leave Act as an "employer." The Second Circuit held that the "economic-reality test" used to analyze individual liability under the Fair Labor Standard Act should be applied to FMLA claims. The Second Circuit explained that courts applying the economic-reality test to the FMLA context are "asking essentially whether the [individual] controlled in whole or part plaintiff's rights under the FMLA." Id. (citation omitted). Applying the economic reality test to the facts of the case, the Second Circuit held that the Director of Human Resources could be considered an "employer" subject to personal liability where she "exercised control over Graziado's schedule and conditions of employment, at least with respect to her return from FMLA leave." Id. (emphasis added). Individual liability is a significant consideration for managerial employees who may be exposed to the risk of legal claims, as well as employees who may be considering pursuing FMLA claims against a company experiencing financial trouble.

Our Firm regularly handles cases involving FMLA interference and retaliation claims. Such claims are often tied to claims of pregnancy discrimination because the eligible employee is pregnant and seeking FMLA leave to care for the child after birth.

Bryan L. Arbeit
Associate
WIGDOR LLP
85 Fifth Avenue, New York, NY 10003
T: (212) 257-6800 | F: (212) 257-6845
barbeit@wigdorlaw.com
www.wigdorlaw.com