



Court: Worker Can Sue Supervisor As Individual in Medical Leave Claim

By Peter L. Frattarelli

In a novel ruling, the federal appeals court for the Delaware Valley recently added the federal Family and Medical Leave Act ("FMLA") to the expanding list of employment laws under which supervisors may be held individually liable.

The decision by the Third Circuit Court of Appeals means managers and supervisors can now be sued by employees displeased with the handling of their family and medical leave requests. Given that requests under FMLA are often the most complex and troubling for employers, this decision provides even more reason for proper management training on handling leave requests.

When employees bring claims under state or federal law, a frequent question arises: "Can the individual supervisors

and managers involved be sued personally?" The answer is a very muddled, "Sometimes." It depends on which law is the basis for the claim and which court the action is filed in. What seems an easy and threshold issue is not always so clear.

In the Third Circuit case, *Haybarger v. Lawrence County Adult Probation and Parole*, an employee who was terminated, presumably for poor performance, alleges that the discipline and ultimate termination were in retaliation for missing work due to several serious medical conditions. The lawsuit names not only her employer, but also her supervisor, who was directly involved in the discipline and termination decisions.

The trial court dismissed the claim against the individual on the grounds that she did not have the authority to hire and fire, but could only recommend firing. In overturning the decision, the appeals court expanded the definition of "employer" under the FMLA, which requires larger employers and public agencies to provide time off for a

serious medical condition of an employee or family members, or for birth or adoption of a child.

The court determined that an individual is subject to FMLA liability when he or she exercises supervisory authority over the complaining employee and is responsible in whole or part for the alleged violation. The Third Circuit found that a jury needed to decide whether the supervisor in question exercised adequate authority over the employee to be an "employer."

With its decision, the Third Circuit joins a split among federal appeals courts around the country. Yet, until the issue is decided by the U.S. Supreme Court, which is not likely to happen anytime soon (if at all), employers in this geographical area must follow this decision, adding to the already-numerous reasons to train managers and supervisors on the FMLA.

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