Federal Appeals Court Rules That Supervisors Can Be Individually Liable Under FMLA

Client Advisories

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In a novel ruling by the federal appeals court for the Delaware Valley area, the Third Circuit Court of Appeals recently added the federal Family and Medical Leave Act ("FMLA") to the expanding list of labor and employment laws under which supervisors may be held individually liable. Contrary to several other federal statutes, this decision now means that managers and supervisors can be sued as defendants by employees who are displeased with how their family and medical leave requests were handled. Given that FMLA requests are often the most complex and troubling for seasoned management and human resources professionals to handle, this decision provides even more reason for employers (and the individual decision makers) to be properly trained on leave requests.

When employees bring claims under state or federal law, a frequent question that arises is: "Can the individual supervisors and managers involved in the issue be sued personally, when the employee goes to court and sues his/her employer?" Unfortunately for these individuals, the answer is a very muddled, "Sometimes." The answer depends on which law the employee is using as the basis for the claim, along with which court the action is filed in. What should seem to be an easy and threshold issue is not always so clear.

The latest example of this doctrine comes from a recent decision by the federal appeals court responsible for Pennsylvania, New Jersey and Delaware, Haybarger v. Lawrence County Adult Probation and Parole. This case involved a claim brought under the FMLA, which requires larger employers and public agencies to provide time off for serious medical condition of an employee or the employee's family members, or for birth or adoption of a child. In the Haybarger case, an employee who was terminated, presumably for poor performance, alleged that this discipline and ultimate termination were in retaliation for missing work due to several serious medical conditions. In the lawsuit, the employee sued not only her employer, but also her direct supervisor who was directly involved in the discipline and termination decisions.

When this case was first brought before the federal trial court, the U.S. District Court for the Western District of Pennsylvania dismissed the individual supervisor, on the grounds that he did not have the authority to hire and fire, but could only recommend firing. Yet, on appeal to the Third Circuit Court of Appeals, the employee successfully overturned this decision.

In doing so, the appeals court expanded the definition of who could be an "employer" under the FMLA. The Court did so by looking at the Fair Labor Standards Act ("FLSA"), which had a similar definition of "employer" as the FMLA: "employer" includes "any person who acts, directly or indirectly, in the interest of an employer." By adopting the rationale of cases under the FLSA, 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 while acting in the employer's interest. In making this decision, the Court identified several relevant factors as follows: whether the supervisor/manager (1) had the power to hire and fire the employee; (2) supervised and controlled employee work schedules or conditions of employment; (3) determined the rate and method of payment; and (4) maintained employment records. Given this test, the Third Circuit reversed the trial court and found that a jury needed to decide whether the supervisor in question exercised adequate authority over the employee to be an "employer." Clearly, however, "employer" under the FMLA is no longer limited to the entity itself, but will include supervisors and managers involved in the decision-making process.

In reaching its decision, the Third Circuit joined a split among the federal appeals courts around the country on this issue. Yet, until the issue is decided by the United States Supreme Court, which is not likely to happen anytime soon (if at all), employers in this geographical area must follow this decision. Therefore, this decision merely adds to the already-numerous reasons why training managers and supervisors on the FMLA is important. Most sophisticated supervisors and managers will not be surprised by this decision, given that, for example, they can be sued personally under New Jersey and Pennsylvania anti-discrimination laws already. But, it does underscore the need for these FMLA decisions to be thoughtfully made and properly discussed at the appropriate management level.

If you have any questions or concerns regarding this decision, or any other labor and employment matter, please contact Archer's Labor and Employment Department at (856) 795-2121.

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