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GT ALERT

U.S. Supreme Court Invalidates Draconian Regulatory Penalty Imposed On Employers For Failing To Notify Employees Taking Leave That The Leave Will Be Counted As FMLA Leave

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"The Court found that the penalty was incompatible with the FMLA's remedial provision that requires an employee to establish that the employer violated the employee's rights and that the employee suffered prejudice or an impairment of rights in the process."

By Eric B. Sigda, Esq.

In a case of importance to all employers covered by the Family and Medical Leave Act ("FMLA"), on March 19, 2002 the United States Supreme Court invalidated a federal regulation providing that "[i]f an employee takes paid or unpaid leave 'and the employer does not designate the leave as FMLA leave, the leave does not count against an employee's FMLA entitlement.'" Ragsdale v. Wolverine World Wide, Inc., 539 U.S. ___, 122 S.Ct. 1155, 1159 (2002) (quoting 29 C.F.R. § 825.700(a)).

The FMLA guarantees qualifying employees with twelve weeks of unpaid leave in a one-year period following certain events such as a family member's serious illness or the birth of a child. The regulations make it clear that it is the employer's responsibility to inform an employee that an absence will be considered FMLA leave. "Employers must give written notice of the designation along with detailed information concerning the employee's rights and responsibilities under the Act, within a reasonable period of time after notice of the need for leave is given by the employee – within one or two business days if feasible." Ragsdale, 122 S.Ct. at 1160 (quoting 29 C.F.R. § 825.311(c)). Additionally, during the

leave period, the employer must continue the employee's group health coverage and upon the employee's return to work, the employer must reinstate the employee to his or her former position or an equivalent position. See 29 U.S.C. § 2601 et seq.; 29 C.F.R. § 800.208; 29 C.F.R. § 800.301.

In the Ragsdale case, petitioner Tracy Ragsdale began working for respondent Wolverine World Wide, Inc. ("Wolverine") in 1995 and soon thereafter was diagnosed with Hodgkin's disease. Under Wolverine's leave plan (as derived from the applicable collective bargaining agreement), Ms. Ragsdale was eligible for seven months of unpaid leave. As a result, Ms. Ragsdale asked for and received seven consecutive one-month leaves of absence to care for her condition. Wolverine held Ms. Ragsdale's position open throughout her leave and paid her medical insurance premiums for six months. Wolverine did not, however, notify Ms. Ragsdale that twelve weeks of leave would be designated as FMLA leave.

At the end of the seventh month of leave, Ms. Ragsdale again requested a further leave of absence or the opportunity to work part-time. Because she had exhausted her medical leave under the company plan, however, Wolverine advised Ms. Ragsdale that she must return to work on a full-time basis. When Ms. Ragsdale did not return to work, Wolverine terminated her employment.

Ms. Ragsdale filed suit in the United States District Court for the District of Arkansas, alleging that because Wolverine did not notify her that it had designated her medical leave as FMLA leave, she was entitled to another twelve weeks of leave. Ms. Ragsdale relied on a Department of Labor regulation that provided that if an employer takes medical leave, "and the employer does not designate the leave as FMLA leave, the leave taken does not count against an employee's FMLA entitlement." 29 C.F.R. § 825.700(a) (2001). Ms. Ragsdale sought reinstatement and backpay. The district court, though, ruled in favor of Wolverine, granting the company's request for summary judgment, and the Eighth Circuit affirmed the judgment of the district court.

The Supreme Court, noting that Wolverine had complied with the statute by granting Ms. Ragsdale 30 weeks of leave, more than twice what the FMLA required, affirmed the decisions of the lower courts. The Court found that the penalty was incompatible with the FMLA's remedial provision that requires an employee to establish that the employer violated the employee's rights and that the employee suffered prejudice or an impairment of rights in the process. Here, Ms. Ragsdale never demonstrated that she suffered harm because of Wolverine's admitted violation or that she would have taken less leave or intermittent leave had Wolverine notified her properly. The Court further found that the penalty was disproportionate and inconsistent with the intent of the Act, because it provided certain employees with a right to more than twelve weeks of leave in a one-year period if the company failed to provide proper notice. Additionally, the Court was concerned that this regulation would act to discourage employers from adopting more generous leave polices than the FMLA required, which the Court viewed as an important goal embodied in the FMLA.

Notwithstanding the Supreme Court's ruling, employers should not rush to change their family and medical leave policies. First, the Court emphasized that its ruling did not disturb an employee's right to take twelve weeks of leave under the FMLA in a twelve month period. Additionally, although employers no longer have to fear the rather draconian penalty that they provide another twelve weeks of FMLA leave for failing to notify an employee on medical leave that the leave counts as FMLA leave, the Court left

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open that regulations may be adopted to remedy employees who are not notified properly. Indeed, an employer may be liable for damages if an employee can demonstrate that the employee suffered prejudice as a result of the employer's action. Employers also may be subject to suit if it is shown that the employer intentionally did not inform an employee that the company was designating the employee's leave as FMLA leave (as opposed to an unintended technical violation). In short, by invalidating the federal regulation that entitled employees to another twelve weeks of medical leave in the event that an employer violated the FMLA's notice provision, the Court removed the hammer hanging over employers who committed a notice violation but did not rule out the imposition of a remedy if the affected employee can demonstrate actual harm or prejudice.

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