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The Family and Medical Leave Act (FMLA)

The Family and Medical Leave Act of 1993, as amended, (FMLA; P.L. 103-3) entitles eligible employees to unpaid, job-protected leave for certain family and medical needs, with continuation of group health plan benefits. Through the act, Congress sought to strike a balance between workplace responsibilities and workers' growing need to take leave for significant family and medical events.

The FMLA applies to covered employers and eligible employees in the private and public sectors; members of the Armed Forces are not eligible for FMLA leave.

The Leave Entitlement

The FMLA requires that covered employers grant up to 12 workweeks in a 12-month period to eligible employees for one or more of the following reasons:

- the birth and care of the employee's newborn child, provided that leave is taken within 12 months of the child's birth;
- the placement of an adopted or fostered child with the employee, provided that leave is taken within 12 months of the child's placement;
- to care for a spouse, child, or parent with a serious health condition;
- the employee's own serious health condition that renders the employee unable to perform the essential functions of his or her job; and
- qualified military exigencies arising from the fact that the employee's spouse, child, or parent is a covered military member on covered active duty.

In addition, the act provides up to 26 workweeks of leave in a single 12-month period to eligible employees for the care of a covered military servicemember (including certain veterans) with a serious injury or illness that was sustained or aggravated in the line of duty while on active duty, if the eligible employee is the covered servicemember's spouse, child, parent, or next of kin. The combined use of FMLA leave for all qualifying reasons may not exceed 26 workweeks during this single 12-month period.

Under certain conditions, employees may use FMLA leave intermittently.

Characteristics of Leave

FMLA leave has four fundamental characteristics:

- It is an *entitlement*, which means that, unlike other forms of leave (e.g., vacation days), it must be granted to an eligible employee with an FMLA-qualifying need for leave who meets the act's notification and documentation requirements.
- FMLA *guarantees unpaid leave*, but provides that employees may elect to substitute (or employers may require the substitution of) certain types of accrued paid leave for unpaid FMLA leave, within the constraints of employer policy.
- FMLA leave is *job-protected*, which means that—with few exceptions—an employer must return the employee to the same job or to one that is equivalent in terms of pay, benefits, working conditions, and responsibilities to the one held prior to taking leave.
- *Preexisting group health benefits must be maintained* during the employee's absence under the same conditions that were in place prior to taking leave.

Covered Employers

In general, employers engaged in commerce with 50 or more employees for 20 weeks in the current or last calendar year are covered by the act.

Employee Eligibility

In general, to be eligible for FMLA leave, an employee must

- work for a covered employer;
- have 1,250 hours of service in the 12 months prior to the start of leave;
- work at a location where the employer has 50 or more employees within 75 miles of the worksite; and
- have worked for the employer for 12 months.

Employer and Employee Responsibilities

The act provides rules concerning employer and employee notification requirements, employee responsibilities for scheduling of leave, employer rights to certification, and employer record-keeping requirements.

Prohibited Acts and Remedies

The FMLA prohibits the interference, restraint, or denial of rights provided through the act, and the dismissal of or discrimination against those who protest a prohibited act. Employees whose FMLA rights have been violated may be awarded monetary damages (e.g., for lost compensation) and equitable relief, as appropriate (e.g., reinstatement).

The FMLA and the U.S. Supreme Court

Since the FMLA's enactment, the Supreme Court has issued three decisions involving the statute. In the first,

Ragsdale v. Wolverine World Wide, the Court considered a challenge to a Department of Labor regulation penalizing employers for failing to designate leave as FMLA. In *Nevada Department of Human Resources v. Hibbs* and *Coleman v. Court of Appeals of Maryland*, the Supreme Court considered the constitutionality of lawsuits against state entities under the FMLA. Together, these three cases have shed light on the rights and obligations under the FMLA.

Ragsdale v. Wolverine World Wide, Inc. (2002)

The defendant in *Ragsdale*, Wolverine World Wide (WWW), gave its employees up to seven months of unpaid sick leave. Ragsdale was a WWW employee who was diagnosed with Hodgkin's disease. During treatment, Ragsdale requested and received 30 weeks of unpaid leave. However, WWW denied her request for additional leave. When she then failed to return to work, WWW fired her.

Under a then existing regulation, if an employer failed to designate an employee's leave as FMLA leave and/or failed to notify the employee of this designation within a reasonable time after the employee made her need for leave known, then the leave did not count toward the employee's FMLA leave entitlement. WWW conceded that it never designated any of Ragsdale's 30 weeks of unpaid leave as FMLA leave. Thus, according to Ragsdale, the regulation entitled her to 12 weeks of FMLA leave on top of the 30 weeks of unpaid leave that she had already taken. When WWW did not provide Ragsdale with this additional leave and fired her, she sued the company for interfering with her FMLA rights.

The Supreme Court held that the regulation at issue was invalid. According to the Court, under the FMLA's remedial scheme, an employer is liable to an employee for interfering with FMLA rights only when the interference prejudices—or injures—the employee. However, the regulation at issue categorically penalized employers by requiring them to provide 12 additional weeks of FMLA leave for failing to designate leave as FMLA leave, even if this failure did not injure the employee. The Court therefore found the regulation contrary to the FMLA's remedial scheme. After *Ragsdale*, a number of federal courts of appeals held that for employees to successfully sue employers for interfering with the exercise of FMLA rights, they must show that they were prejudiced by the interference.

Nevada Department of Human Resources v. Hibbs (2003)

A year after the Supreme Court's decision in *Ragsdale*, it considered whether a state's sovereign immunity under the 11th Amendment precludes certain FMLA suits against it in *Hibbs*. The plaintiff, Hibbs, was a Nevada agency employee authorized to take FMLA leave to care for his seriously injured wife. However, during Hibbs's leave period, his employer informed him that he had run out of FMLA leave and had to return to work by a specified date. When he failed to do so, Hibbs was fired. Hibbs then sued the company for interfering with his FMLA rights. In response, the agency argued that, as a state entity, its sovereign immunity under the 11th Amendment shielded it from such lawsuits.

According to the Court, Congress can eliminate states' 11th Amendment immunity when it does so through "unmistakably clear" statutory language and acts pursuant to a proper use of its power under Section 5 of the 14th Amendment (§5). Section 5 allows Congress to enact appropriate legislation to enforce the substantive guarantees of the 14th Amendment, including the guarantee of equal protection of the laws.

The Court noted that the FMLA's language makes unmistakably clear that Congress intended to permit FMLA suits against states by expressly authorizing them. Thus, the outcome of the case depended on whether Congress acted pursuant to a valid exercise of its Section 5 power when authorizing such suits against states. According to the Court, in passing the FMLA, Congress relied on evidence of gender-based discrimination by states in family leave policies that potentially violated the 14th Amendment. The Court thus held that Congress properly authorized suits against states for interfering with an employee's FMLA right to take leave to care for a spouse, son, daughter, or parent with a serious health condition.

Coleman v. Court of Appeals of Maryland (2012)

The plaintiff in *Coleman* was a state employee who, when sick, requested FMLA leave. His employer denied the request, and informed him that he would be fired if he did not resign. Coleman sought money damages, alleging that his employer violated the FMLA. In response, the employer argued that, as a state entity, the 11th Amendment shielded it from such lawsuits.

Like *Hibbs*, the Court in *Coleman* considered whether the 11th Amendment precluded certain FMLA suits against states. However, in *Hibbs*, the Court evaluated the permissibility of suits against states for violating the FMLA entitlement to leave to take care of a spouse, son, daughter, or parent with a serious health condition, and the *Coleman* court determined the permissibility of suits against states for violating the FMLA's self-care provision. The self-care provision provides leave because an employee's serious health condition renders her incapable of performing her job functions.

In *Coleman*, the Court indicated that there was not widespread evidence of sex discrimination or gender stereotyping in states' administration of self-care leave policies, as there was with family leave policies in *Hibbs*. Accordingly, the Court held that Congress did not act pursuant to proper Section 5 authority when authorizing suits against states for interfering with self-care rights under the FMLA. Therefore, states are generally immune from such suits under the 11th Amendment.

Sarah A. Donovan, Analyst in Labor Policy
Rodney M. Perry, Legislative Attorney

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