

## Federal Appeals Court Provides Employers With a Harsh Reminder to Carefully Draft Their FMLA Policies

Employers are likely well aware of the [conditions](#) that must be satisfied before an employee can be deemed eligible for leave pursuant to the Family and Medical Leave Act (FMLA):

- the employee has worked for the employer for at least 12 months;
- the employee has worked 1,250 hours in the 12 months preceding the leave request; and
- the employer has 50 or more employees at, or within 75 miles of, the employee's workplace — the so-called "50/75" requirement.

If one of these conditions is not satisfied, an employer cannot later be held liable for any FMLA-related claims brought by an employee, right? Not so fast! Although determining whether these conditions are met is typically the simplest step in the FMLA certification process, the United States Court of Appeals for the Sixth Circuit recently reminded employers of the headaches they may face if they are not careful in notifying their employees of these conditions.

On January 26, 2015, the Sixth Circuit decided [Tilley v. Kalamazoo County Road Commission](#). Tilley was employed by the Road Commission, which did not meet the 50/75 requirement. The Road Commission's personnel manual contained the following statement regarding an employee's eligibility to apply for FMLA benefits: "Employees covered under the Family and Medical Leave Act are full-time employees who have worked for the Road Commission and accumulated 1,250 work hours in the previous 12 months."

On August 1, 2011, Tilley began experiencing symptoms that made him fear that he was suffering a heart attack. He was taken to the hospital, admitted for observation, and discharged the next day. After his discharge, Tilley's wife informed the Road Commission that Tilley would not be able to return to work until at least August 5.

On August 9, a Road Commission representative sent Tilley FMLA paperwork that informed him that he was "eligible for FMLA leave." At no time was Tilley informed that the Road Commission did not meet the 50/75 requirement, or that such a requirement even existed. On August 12, the Road Commission terminated Tilley's employment, claiming that the reason for his termination was his failure to timely submit certain work assignments.

Tilley filed suit, claiming that the Road Commission interfered with his right to FMLA leave and retaliated against him for taking such leave. The Sixth Circuit agreed with the Road Commission that Tilley was not technically an "eligible employee" under FMLA, but concluded that Tilley's case could continue because there was a dispute as to whether the Road Commission was "equitably estopped" from denying that Tilley was an eligible employee.

The Court explained that "in certain circumstances equitable estoppel applies to employer statements regarding an employee's FMLA eligibility, preventing the employer from raising non-eligibility as a defense." In order to prevail on such an "equitable estoppel" argument, an employee must show a definite misrepresentation by the employer, a reasonable reliance on the misrepresentation, and a resulting detriment to the employee who reasonably relied on the misrepresentation. The Court found that Tilley presented sufficient evidence on all three elements to allow his case to continue.

As to the first element, the Court held that the Road Commission's personnel manual contained a "clear misrepresentation" as to Tilley's eligibility to apply for FMLA benefits. Specifically, the manual contained an "unambiguous and unqualified statement" that Tilley was covered by FMLA and was eligible to apply for FMLA benefits if he worked 1,250 hours in the previous 12 months, but it failed to note that the 50/75 requirement must also be satisfied. Next, the Court found that there was sufficient evidence that Tilley relied upon the eligibility statement in the manual, which was sufficient to satisfy the second element. Finally, as to the third element, the Court held that Tilley suffered a detriment as a result of his reliance on the eligibility statement in the manual since he was fired in part because he missed a deadline that he claims he would not have missed but for his reliance on the manual. Therefore, because Tilley raised questions of fact regarding all elements of an equitable estoppel claim, the Court permitted Tilley's FMLA claims to move forward.

The takeaway from this decision is straightforward: employers should immediately review their personnel manuals and/or FMLA policies to ensure that they are well-drafted and that all eligibility conditions for FMLA leave are adequately explained. A poorly drafted or incomplete FMLA policy could result in an employer being in a situation similar to the Road Commission — potentially being liable for an FMLA claim even when the employee making the claim is not even technically eligible for FMLA leave!

To learn more, contact [Joseph K. Dier](mailto:jdier@bsk.com) at (518) 533-3213 or [jdier@bsk.com](mailto:jdier@bsk.com).



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