

Warn supervisors: You may be individually liable under the FMLA

The 3rd Circuit Court of Appeals recently held that supervisors may be subject to individual liability under the FMLA.

The case originated in New Jersey, where the 3rd Circuit has judicial authority. That means the decision is not binding on U.S. District Courts in New York or the 2nd Circuit Court of Appeals, which decides federal appeals in New York. However, the decision does potentially open the door for plaintiffs in FMLA cases filed in New York to name individual supervisors as defendants in their lawsuits.

The case is *Haybarger v. Lawrence County Adult Probation and Parole* (No. 10-3916, 3rd Circuit, 2012).

FMLA leave and a firing

In *Haybarger*, plaintiff Debra Haybarger was an office manager for Lawrence County (N.J.) Adult Probation and Parole. Haybarger's supervisor was William Mancino, director of probation and parole.

Haybarger has Type 2 diabetes, heart disease and kidney problems, which constitute serious health conditions under the FMLA. Her condition made her miss work frequently.

In early 2004, Mancino wrote on Haybarger's performance evaluation that she needed to "improve her overall health and cut down on the days that she misses due to illness."

Then Mancino placed Haybarger on a six-month probationary period to correct performance problems. When the probation expired, Mancino subsequently recommended Haybarger's termination, and she was fired in October 2004.

Initial suit, and an appeal

After her discharge, Haybarger filed a lawsuit against Lawrence County Adult Probation and Parole. Her lawsuit also listed Mancino as a defendant, claiming that in his individual capacity, he violated Haybarger's rights under the FMLA.

The U.S. District Court for the

Supervisor liability under federal law

Supervisors may be held personally liable for violations of these federal laws:

- FMLA
- Fair Labor Standards Act
- Uniformed Services Employment and Reemployment Rights Act
- Employee Polygraph Protection Act.

They can't be held personally liable under:

- Title VII of the Civil Rights Act
- ADA
- Age Discrimination in Employment Act
- Pregnancy Discrimination Act.

District of New Jersey granted summary judgment to Mancino with respect to the FMLA claim against him in his individual capacity.

However, the 3rd Circuit reversed.

Appeals court's reasoning

The 3rd Circuit examined the definition of "employer" under the FMLA. According to the law, an employer is "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer."

The 3rd Circuit also reviewed the U.S. Department of Labor's regulations implementing the FMLA, which provide that "individuals such as corporate officers 'acting in the interest of an employer' are individually liable for any violations of the requirements of FMLA."

Thus, the 3rd Circuit concluded that "liability for FMLA violations may be imposed upon an individual person who would not otherwise be regarded as the plaintiff's 'employer.'"

Although the employer at issue in the *Haybarger* case was a public agency, the 3rd Circuit's analysis

appears to apply equally to individual supervisors at private employers as well.

An economic test

The appeals court also held that there was a genuine dispute of material fact regarding whether Mancino exercised sufficient authority over Haybarger's employment to qualify as an employer under the FMLA. Thus it remanded the case back to the District Court for a jury trial.

The 3rd Circuit applied an "economic reality" test to determine whether a reasonable jury could determine that Mancino qualified as Haybarger's employer under the FMLA. Citing a 2nd Circuit Court of Appeals case in the context of a Fair Labor Standards Act (FLSA) claim, the 3rd Circuit examined the following factors in applying the economic reality test. It asked whether the individual:

1. Had the power to hire and fire
2. Supervised and controlled the employee's work schedules or conditions of employment
3. Determined the rate of payment
4. Maintained employment records.

Based on those factors, the 3rd Circuit concluded that a reasonable jury could find that Mancino acted as Haybarger's employer under the FMLA.

What employers should do

Employers in New York should be aware that plaintiffs who allege a violation of their FMLA rights may name individual supervisors as defendants in their lawsuits.

Take this opportunity to train your supervisors about the FMLA. In addition, remind supervisors that their actions could result not only in liability for the employer, but also potentially in liability for themselves.

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