In the first case involving the federal Family and Medical Leave Act to make its way to the U.S. Supreme Court, attorneys on both sides of the case debated the validity of the Department of Labor's regulations interpreting the notice provisions of the Act. In oral argument before the high court on January 7, the attorney for plaintiff Tracy Ragsdale asked the justices to throw out the decision of the U.S. Court of Appeals for the Eighth Circuit that dismissed her lawsuit against Wolverine World Wide Inc. and invalidated a series of Labor Department regulations. Those regulations state that if an employer fails to provide an employee of advance notice that paid or unpaid leave will be counted as FMLA leave, the employee retains the right to the 12 weeks of FMLA leave (Ragsdale v. Wolverine World Wide Inc., U.S., No. 00-6029, oral arg., 1/7/02).

A Justice Department attorney siding with Ragsdale told the high court that the rules were a reasonable interpretation of the act. However, Wolverine's attorney said Ragsdale took seven months of medical leave—much more than the 12 weeks guaranteed by the act. Even though the company did not give her prior notice that the leave counted as FMLA leave, Ragsdale’s rights—as intended by Congress—were met and she suffered no damages, he said.

Employer Failed to Meet Notice Requirement

One of the DOL rules at issue in the case states "[i]n all circumstances, it is the employer’s responsibility to designate leave, paid or unpaid, as FMLA-qualifying, and to give notice of the designation to the employee" (29 C.F.R. § 825.208(a)). In two other rules, DOL provides that employees will retain their right to 12 weeks of FMLA leave if the employer fails to provide prior notice that paid or unpaid leave will be counted toward the FMLA allotment (29 C.F.R. § 825.208(c); 29 C.F.R. § 825.700(a)).

In rejecting Ragsdale’s suit, the Eighth Circuit said the DOL rule "creates rights which the statute clearly does not confer. ...While the statute only requires the employer to provide 12 weeks of unpaid leave, under the DOL regulations, the employer could be forced to provide much more leave." However, the attorney for plaintiff Ragsdale argued the FMLA guarantees employees a “bundle of rights,” including informing employees about their leave rights and providing them notice how and when that leave time will be counted.

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