Connecticut's Family and Medical Leave Act Does Not Apply to Employers with Fewer than 75 Employees within State

By Beverly W. Garofalo

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In a much-anticipated ruling, the Connecticut Supreme Court has held that employers in Connecticut are not subject to the provisions of the Connecticut Family and Medical Leave Act unless they employ at least 75 employees within the state. *Velez v. Commissioner of Labor, et al.*, Nos. SC 18683 & 18684 (Sept. 25, 2012). The decision has broad implications for employers in Connecticut.

Applicable Law

The Connecticut Family and Medical Leave Act ("CFMLA"), General Statutes § 31-51kk *et seq.*, requires that employers provide to eligible employees "sixteen workweeks of leave during any twenty-four-month period" for numerous reasons, including: the birth of a child to an employee; caring for a spouse, child, or parent of employee because of a serious health condition; or because of a serious health condition suffered by the employee. § 31-51*ll*.

"Employer" is defined in the CFMLA as "a person engaged in any activity, enterprise or business who employs seventy-five or more employees . . . ." § 31-51kk (4).

Background

In the case before the Supreme Court, the plaintiff, Joaquina Velez, was employed as a full-time office manager of an apartment complex in Harford, Connecticut. Velez's employer employed more than 1,000 employees nationwide, but fewer than 75 employees are within Connecticut.

In April of 2005, Velez requested medical leave, and her employer approved her for 12 weeks of leave under the federal Family and Medical Leave Act. Approximately a month later, Velez requested that she be allowed to return to work doing "light duty." The employer informed her that light duty was not available. Upon expiration of her medical leave, Velez informed her employer that she was still unable to resume performing her essential job functions due to medical restrictions. Velez's employment was thereafter terminated.

Velez subsequently filed a complaint with the Connecticut Department of Labor ("DOL") alleging her employer had violated the CFMLA by refusing to allow her to return to work. The DOL hearing officer concluded that the employer was not subject to the CFMLA as it did not employ at least 75 employees in Connecticut. The Commissioner of Labor adopted the findings of the hearing officer.

Velez filed an administrative appeal with the Connecticut Superior Court. The Superior Court held that the CFMLA applied to employers that employ at least 75 employees anywhere in the United States. Because Velez's employer had more than 75 employees in total, the court held that it had violated the CFMLA. The defendants appealed the trial court's decision to the Connecticut Supreme Court.

Connecticut Supreme Court Decision

The Connecticut Supreme Court reversed the Superior Court's decision, holding that the CFMLA applies only to employers that employ at least 75 employees in Connecticut. In reversing the decision, the Supreme Court concluded the lower court had failed to accord proper deference to the Labor Commissioner's interpretation of "Employer" and its determination as to who is counted as an "employee" for purposes of the CFMLA.

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This decision removes the cloud of uncertainty for employers with fewer than 75 employees in Connecticut. Pending the Supreme Court's ruling, many employers with fewer than 75 employees in Connecticut, but with at least 75 employees nationwide, had begun following the CFMLA. With an

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abundance of caution, they did so even if they were not otherwise subject to the federal FMLA (because they had fewer than 50 employees within 75 miles) and notwithstanding the Connecticut DOL's longstanding interpretation of the CFMLA. With this decision, it is again clear that only employees within the state of Connecticut will count toward the CFMLA's threshold of 75 employees.

If you have any questions regarding the implications of this decision on your workplace and employment procedures, please contact the Jackson Lewis attorneys with whom you regularly work.