SECOND CIRCUIT HOLDS THAT HUMAN RESOURCES DIRECTORS MAY BE INDIVIDUALLY LIABLE FOR FMLA VIOLATIONS

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The Second Circuit recently held that a Director of Human Resources may be individually liable for violations of the Family and Medical Leave Act (FMLA). Relying on the "economic reality" standard derived from the Fair Labor Standards Act (FLSA), the court held that human resources professionals may be individually liable for FMLA violations based on the level of control they have over an employee's exercise of rights under the FMLA. This is an important decision for employers – and human resources professionals – in the Second Circuit who are covered by the FMLA.

Overview of the Facts in *Graziadio v. Culinary Institute of America*

In *Graziadio v. Culinary Institute of America*, No. 15-888 (2d Cir. 2016), plaintiff Graziadio was terminated from her employment as a payroll administrator with the Culinary Institute of America (CIA) while she was on leave. Graziadio had taken FMLA leave to care for her son and, several weeks later, took additional leave when her second son broke his leg. At the end of her second leave of absence, Graziadio requested to return to work on a part-time basis. After several days, the Director of Human Resources (Director of HR) responded to Graziadio's request via email, stating that Graziadio's FMLA paperwork "did not justify her absences from the workplace and that Graziadio had to provide "updated paperwork." Graziadio emailed a response, stating that she was "not clear" what paperwork was needed for her and that she had not received FMLA forms from CIA to provide to her son's physician. Several days later, the Director of HR responded, providing a FMLA brochure from the U.S. DOL and stating that Graziadio had provided "no paperwork on any medical need pertaining to your absence for [the second son's] care to date." Graziadio promised to obtain medical paperwork pertaining to her second son's condition. Graziadio ultimately provided CIA with a note from her son's doctor, but the Director of HR concluded that the note did not establish a "medical necessity" for Graziadio to provide full time medical care to her son. Their email exchange continued, with the Director of HR refusing to allow Graziadio to return to work – even on a full time basis – until Graziadio provided "new paperwork," and Graziadio

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attempting to schedule a meeting with the Director of HR to discuss her return to work. They never met and, several weeks later, Graziadio was terminated for job abandonment.

Graziadio filed a lawsuit under the FMLA against the CIA, along with her supervisor and the Director of HR individually. Graziadio contended that the Director of HR was an "employer" subject to liability under the FMLA. Summary judgment was granted to the defendants on all claims. Graziadio appealed.

The Second Circuit's Decision

An individual may be held liable under the FMLA only if she is an "employer," which is defined as "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer." Noting that the Second Circuit had not previously "tested the contours" of that definition, the *Graziadio* court recognized that other Circuit courts had applied the FLSA's definition of "employer" when determining whether an individual is an "employer" under the FMLA. Under the FLSA, courts examine whether the alleged employer "possessed the power to control the worker in question, with an eye to the 'economic reality' presented by the facts of each case." Thus, the courts consider a nonexclusive and overlapping set of factors intended to encompass the totality of the circumstances, such as whether the alleged employer (1) had the power to hire and fire, (2) supervised and controlled work scheduled or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records. In *Graziadio*, the Second Circuit adopted this standard for determining whether an individual is an "employer" under the FMLA.

The Second Circuit applied the foregoing test in Graziadio and determined that, with respect to the first factor, the Director of HR "appears to have played an important role in the decision to fire" Graziadio. Although the Vice President of CIA had the ultimate authority over the decision to terminate, the Vice President did not conduct an independent investigation regarding the issues in question. Thus, the court concluded, a jury could conclude that the Director of HR had "substantial authority" in the decision to terminate Graziadio.

As to the second factor, the Second Circuit found that the Director of HR exercised control over Graziadio's schedule and conditions of employment, "at least with respect to her return from FMLA leave," based on testimony that the Human Resources department "alone" handled employees' return to work and any accommodation needs. The record did not contain evidence with respect to the remaining two factors, determination of the rate and method of pay and maintenance of employment records.

On the overarching question of whether the Director of HR "controlled [Graziadio]'s rights under the FMLA," the Court concluded that

"there seems to be ample evidence to support the conclusion that she did, [with evidence] demonstrate[ing] that a) that [the Director of HR] reviewed Graziadio's FMLA paperwork, b) that she determined its adequacy, c) that she controlled Graziadio's ability to return to work and under what conditions, and d) that she sent Graziadio nearly every communication regarding her leave and employment (including the letter ultimately communicating her termination). Indeed, [the Director of HR] specifically instructed [other employees] that they were not to communicate with Graziadio and that [the Director of HR] alone would handle Graziadio's leave dispute and return to work."

The Court, therefore, concluded that a rational jury could find that the Director of HR "exercised sufficient control over Graziadio's employment to be subject to liability under the FMLA."

Analysis

It is unclear whether the Director of HR in *Graziadio* will ultimately be considered an employer under the FMLA and, thus, subject to individual liability. The case was remanded to the lower court for proceedings consistent with the Second Circuit's decision. The *Graziadio* case, however, is an important reminder of the FMLA's breadth and potential for individual liability for human resources professionals and supervisors that oversee employees' FMLA leave. Critically, in *Graziadio*, the Second Circuit adopted the FLSA's definition of "employer" – which is the broadest definition of "employer" that exists in law – for determining whether an individual employee may be an "employer" for purposes of FMLA liability. It is now clear that human resources professionals and supervisors that administer FMLA leave may be sued individually for alleged FMLA violations.

Please contact any of one of our labor and employment attorneys if you have questions about this alert or any other employment matter.