



Labor: Checking in with recent and upcoming FMLA decisions

The DOL also may establish new regulations soon

KATHLEEN FUREY MCDONOUGH

Three years after the effective date of the latest revision to regulations under the Family and Medical Leave Act (FMLA), issues concerning the FMLA continue to be a focus of the U.S. Department of Labor (DOL) and the courts.

Recently, the U.S. District Court for the Western District of Pennsylvania ruled that an employer who imposed travel restrictions on employees on medical leave did not violate the FMLA. In *Pellegrino v. Communications Workers of America*, the employer required employees who were on FMLA leave to remain in the immediate vicinity of their homes; exceptions were made for employees to receive medical treatment or attend to necessary activities related to personal or family needs.

If an employee wanted to leave the immediate vicinity of her home for travel, she needed written permission to do so. When an employee on leave for surgery took a vacation to Cancun, Mexico, during her FMLA leave, the employer terminated her. The employee sued, claiming that the employer violated the FMLA by terminating her employment.

Ultimately, the court granted the employer's motion for summary

judgment. In doing so, the court ruled that the employer's policy served the legitimate purpose of ensuring that medical leave was not abused. Perhaps more importantly, the court also found that the employer's policy did not discourage or prevent employees from taking leave.

This spring, the Supreme Court will address the interplay between the FMLA and the 11th Amendment. In *Coleman v. Maryland* Court of Appeals, the Supreme Court will decide whether state governments enjoy 11th Amendment immunity from suits brought under the FMLA's self-care leave provision. The trial court ruled that the state enjoyed immunity and dismissed the claims and the 4th Circuit affirmed the decision. In doing so, the lower courts' decisions contrasted with an earlier Supreme Court decision in which the high court ruled that state employers are constitutionally subject to FMLA provisions concerning leave to care for a family member with a serious health condition.

Although the new FMLA regulations have been in existence for less than three years, the DOL has hinted at the possibility of further regulations in the near future. The DOL is in the process of conducting an information

collection request (ICR) with respect to the FMLA. When the ICR process commenced, the DOL indicated it was being issued in an attempt to "update DOL's understanding of leave-taking behavior and to close current data gaps remaining from the previous surveys."

The DOL further noted that the survey would allow it to "shape future regulatory options" and "establish regulatory priorities based on sound, current data, rather than on outdated data or anecdotal information." While it remains to be seen when, or if, new regulations will be issued, employers should be aware of the DOL's interest in addressing FMLA regulatory concerns.