



Labor: 3rd Circuit opens door to FMLA liability for public agency supervisors

The court looked to FLSA guidelines to reach its decision

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In a case of first impression, *Haybarger v. Lawrence County Adult Probation and Parole*, the 3rd Circuit joined the 5th and 8th Circuits in finding individual liability for supervisors of public agencies under the Family and Medical Leave Act (FMLA). On the other side of the circuit split, the 6th and 11th Circuits have found that no such liability exists under the FMLA.

In *Haybarger*, the 3rd Circuit reviewed the district court's grant of summary judgment in favor of William Mancino, the director of Probation and Parole for Lawrence County, based on its finding that Mancino was not an "employer" of Debra Haybarger under the FMLA.

Case Background

Haybarger was the office manager at Probation and Parole, an agency of the Lawrence County Court of Common Pleas, and Mancino was her supervisor. Mancino reported to the court administrator who in turn reported to the president judge of the court. Haybarger has Type 2 diabetes, heart disease and kidney problems, which caused her to miss work frequently to seek medical attention. Mancino had expressed dissatisfaction with Haybarger's absences, stating in annual performance evaluations that Haybarger needed to improve her health and cut down on the number of days that she was absent from work.

On March 23, 2004, Mancino formally disciplined Haybarger and placed her on probation, stating that

her conduct, work ethic and behavior were "non-conducive" to the Probation and Parole office. Approximately six months later, at the behest of Mancino after consultation with the court administrator and the president judge, Haybarger was terminated.

Haybarger filed suit against Probation and Parole, Lawrence County and Mancino under the Pennsylvania Human Relations Act, the Americans with Disabilities Act, and the FMLA. For purposes of this appeal, the only matter at issue was Haybarger's FMLA claim against Mancino in his individual capacity.

District Court Ruling

The district court held that, while the FMLA permits individual liability against supervisors working at public agencies, Haybarger failed to present sufficient evidence to hold Mancino liable. The district court reasoned that an individual supervisor is an "employer" under the FMLA if he or she has sufficient control over conditions and terms of employment. The district court then found that an individual has "sufficient control" if he or she has the authority to hire or fire. Here, the district court found that, because Mancino lacked the final authority over the decision to terminate Haybarger, he was not an "employer" under the FMLA.

3rd Circuit Opinion

The 3rd Circuit, as a necessary prerequisite to a ruling on the question

of whether Mancino was Haybarger's "employer" under the FMLA, first had to decide whether individual liability could be imposed on supervisors of a public agency. The court looked to the language of the FMLA and its implementing regulations, and used guidance from decisions interpreting the Fair Labor Standards Act (FLSA) to inform its analysis. In so doing, the court found that supervisors employed by public agencies could be subject to individual liability under the FMLA. The court then went on to analyze whether Mancino was an "employer" for purposes of the FMLA. The court again looked to the FLSA in determining that the totality of the circumstances must be considered in applying the "economic reality" test to determine an individual's status as an "employer" under the FMLA. Thus, the district court's grant of summary judgment based solely on a determination of Mancino's authority to independently hire or fire an employee was inappropriate.

Impact of the Decision

Courts within the 3rd Circuit now have clear precedent to find individual FMLA liability for supervisors employed by public agencies.

Attorneys practicing in the area should be aware of the court's reliance on FLSA precedent as guideposts for interpreting FMLA matters.