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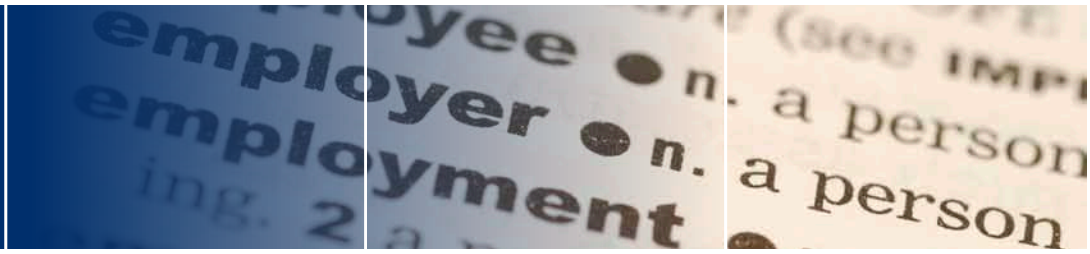

NEWSLETTER
March 2013

Recent Federal District Court Case Highlights the Importance of "Individual" FMLA Notices to Employees on FMLA Leave

The New Jersey U.S. District Court has held that providing a general notice of employee rights and responsibilities under the FMLA may not be enough to avoid liability even where an employee has received all required leave and where that employee fails to return to work at the end of that leave. *Young v. The Wackenhut Corporation*, Civil Action No. 10-2608 (D.N.J. Feb. 1, 2013).

Facts of the Case

When it granted one of its employees, Jacqueline Young, leave under the Family and Medical Leave Act (FMLA), The Wackenhut Corporation (Wackenhut) apparently thought that it had satisfied its legal obligations under that law. Wackenhut had responded to Young's request for FMLA leave by granting her the full 12 weeks of unpaid leave required by the FMLA. When Young failed to return to work on time, Wackenhut first called her and subsequently terminated her employment almost two weeks after her FMLA leave had expired. There was no suggestion that Young had any additional leave available under any Wackenhut policy. Moreover, there was no dispute that Wackenhut had satisfied the general notice requirements by providing a handbook notifying employees of their FMLA rights.

Despite all this, the District Court granted Young's motion for summary judgment determining that her employer violated her FMLA rights by terminating her employment. Employers should be aware of how this happened, so that they can avoid a similar adverse result. *Continued*

Kevin Donovan
Partner, New Jersey
973.735.5760
kevin.donovan@wilsonelser.com

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The Court's Decision

The Court in *Young v. The Wackenhut Corporation*, found that Wackenhut had not provided Young with the "individual notice" mandated by the FMLA. As a result, Young was prejudiced because she had not been able to structure her FMLA leave time in a "meaningful way."

"Individual notice" must be provided when an employee requests FMLA-related leave or when the employer acquires knowledge that an employee's leave may be for an FMLA-qualifying reason. 29 CFR 825.300 (b).

The Court noted that "[w]hen an employee gives notice of FMLA-related leave, the employer must provide each of the following FMLA notices":

1. **Eligibility Notice.** Once an employee notifies an employer of an FMLA-qualifying medical leave, "the employer must notify the employee of the employee's eligibility to take FMLA leave within five business days" of ascertaining that her leave may be for an FMLA-qualifying reason, absent extenuating circumstances. 29 C.F.R. 825.300(b)(1).
2. **Rights and Responsibilities Notice.** Whenever the eligibility notice is provided, "Employers shall provide written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations … Employers are also expected to responsively answer questions from employees concerning their rights and responsibilities under the FMLA." 29 C.F.R. 825.300(c)(1).
3. **Designation Notice.** Within five days of when an employer has enough information to determine whether the employee's leave is FMLA-qualifying, the employer must notify the employee in writing as to whether the leave will be designated and will be counted as FMLA leave. 29 C.F.R. 825.300(d)(1). "If the employer will require the employee to present a fitness-for-duty certification to be restored to employment, the employer must provide notice of such requirement with the designation notice." 29 C.F.R. 825.300(d)(3). Moreover, "[t]he employer must notify the employee of the amount of leave counted against the employee's FMLA leave entitlement. If the amount of leave is known at the time the employer designates the leave as FMLA-qualifying, the employer must notify the employee of the number of hours, days, or weeks that will be counted against the employee's FMLA leave entitlement in the designation notice … " 29 C.F.R. 825.300(d)(6).

Young clearly was aware of the FMLA; she had expressly requested FMLA leave, completed an FMLA leave application, and knew or should have known of the requirements of the FMLA, including the fact that it provided only 12 weeks' leave. Nevertheless, Wackenhut conceded that it had not provided Young with any of the foregoing types of *individual* notices, nor did it ever properly designate Young's leave as FMLA leave. Wackenhut also failed to alert Young to the fact that she would need to provide a doctor's note to return to work. Last, the Court held that Wackenhut had never "formally" provided Young with notice of her return to work date prior to the expiration of her leave, despite the parties having had numerous phone discussions while plaintiff was out. Thus, the Court ruled that Wackenhut did not provide Young with "individualized notice" as required by the FMLA. *Continued*

While a failure to satisfy the individual notice requirement does not automatically mean that Young could establish an actionable claim for interference with her rights under the FMLA, the Court found that Young demonstrated that she was prejudiced by Wackenhut's failure to provide notice. Specifically, Young was able to show that Wackenhut's failure to give proper notice, coupled with Wackenhut's failure to answer her questions regarding her rights and responsibilities, "prevented Plaintiff from ascertaining her return to work date and planning her leave accordingly."

It was these failures, according to Young, that ultimately resulted in her discharge for failing to return in a timely fashion. "Ultimately, according to [Young], these alleged missteps by Wackenhut led to Wackenhut's decision to terminate her employment."

Based on the evidence put before it, the Court was convinced that, "Had she been appropriately apprised of her leave time, Plaintiff could have planned and structured her leave time differently. Thus, Plaintiff did suffer prejudice."

Lessons

The Court's decision is a reminder to employers that simply granting 12 weeks' leave to FMLA-eligible employees is not by itself sufficient to satisfy their obligations under the law. Employers should ensure that their personnel who have responsibility for complying with federal and state leave laws are familiar with all of the requirements of the law and document the provision of all required notices to employees.

Members of Wilson Elser's Employment & Labor practice, located throughout the country, provide one convenient point of contact for our clients. Feel free to contact any of the following partners to access the experience and capabilities of this formidable team.

Contacts:

National Practice Chair
Ricki Roer
ricki.roer@wilsonelser.com
212.915.5375
Northeast

By Region:

Mid Atlantic
Robert Wallace
robert.wallace@wilsonelser.com

Midwest
David Holmes
david.holmes@wilsonelser.com

West
Marty Deniston
martin.deniston@wilsonelser.com

Southeast
Sherril Colombo
sherril.colombo@wilsonelser.com

Southwest
Linda Wills
linda.wills@wilsonelser.com