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LEGAL ALERT

Supreme Court Rules "Self-Care" Provision Of FMLA Does Not Allow State Employees to Sue States

On March 20, 2012, the Supreme Court held that Congress exceeded its authority in subjecting the States to private lawsuits under the self-care provision of the Family and Medical Leave Act (FMLA).

Although it is well established that Congress enacted the family care provisions of the FMLA pursuant to its Fourteenth Amendment mandate to ensure equal protection of all citizens, the Court ruled that the FMLA's self-care provision was not tied to an identified pattern of sex-based discrimination on the part of the states and, therefore, does not permit suits against the states by their employees. *Coleman v. Maryland Court of Appeals.*

Background

The FMLA, as originally enacted, provides that an eligible employee may take up to 12 weeks of leave per year to care for a newborn or newly adopted child, to care for a close relative with a serious health condition (the "family-care provision"), or because the employee is personally suffering from a serious health condition (the "self-care provision").

Generally speaking, public employers (such as states and their subdivisions) enjoy sovereign immunity from lawsuits brought by their employees (Eleventh Amendment immunity). But that immunity is not absolute. In 2003, the Supreme Court held that Congress, pursuant to its Fourteenth Amendment powers, properly abrogated the States' sovereign immunity with regard to the family-care provision of the FMLA. *Nevada Department of Human Resources v. Hibbs.*

In *Hibbs* the Supreme Court found that the family care provision was enacted for the specific purpose of combating gender discrimination in the workplace and therefore, satisfied the Fourteenth Amendment's purpose of ensuring equal protection under the laws for all citizens. After *Hibbs*, public employees were assured the right to seek legal redress from their employers for violations of the family-care provision of the FMLA.

But the *Hibbs* decision did not address the States' sovereign immunity from suits brought under the other provisions of the FMLA.

How The Case Arose

Daniel Coleman worked for the Maryland Court of Appeals as executive director of procurement and contract administration until his termination in August 2007. Coleman had a generally positive employment history with Maryland, but was forced to resign or be terminated the day after he requested sick leave. Coleman sued the Maryland Court of Appeals for, among other things, firing him for requesting sick leave.

Maryland moved to dismiss Coleman's complaint on the grounds that it was barred by Maryland's sovereign immunity. Maryland argued that – unlike the family-care provision, which was a valid exercise of Congress' Fourteenth Amendment powers – Congress did not enact the self-care provision of the FMLA to remedy a pattern of gender-based discrimination in the state's sick leave policies. Instead, Maryland argued, the self-care provision was passed pursuant to the Commerce Clause, which cannot be used to abrogate the states' sovereign immunity, so Coleman's claim should be barred.

The trial court granted Maryland's motion to dismiss, and the U.S. Court of Appeals for the 4th Circuit agreed. In its decision, the 4th Circuit found that Congress had enacted the self-care provision of the FMLA pursuant to the Commerce Clause with the purpose of providing for the economic stability of working families. The 4th Circuit ruled that Congress had exceeded its lawmaking authority insofar as it subjected states to private lawsuits pursuant to the self-care provision. The 4th Circuit was the fifth federal appellate court to reach this conclusion.

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The Supreme Court Decision

The Supreme Court found that Congress had exceeded its authority in its attempt to subject the states to private lawsuits under the self-care provision of the FMLA. Coleman argued that the legislative history of the FMLA clearly demonstrated that the entire statute was passed as a remedial measure to combat gender discrimination in the workplace. The Court found this argument unpersuasive and held that the self-care provision was included to address the economic impact of illness on working families and single parents—not to remedy any form of discrimination prohibited by the Fourteenth Amendment.

The Court did not expressly hold that the self-care provision was enacted pursuant to the Commerce Clause, but instead found that Congress had not considered evidence of a pattern of sex-based discrimination in enacting that provision—a prerequisite to abrogation of state sovereign immunity. On the contrary, the Court noted that 95% of state- and local-government employees were covered by sick leave plans and 96% enjoyed short-term disability benefits. Congress did not conclude that the states' leave policies were facially discriminatory in any way nor did it consider any perceived inadequacies of these policies. As a result, the Supreme Court affirmed the lower courts' rulings that public employees are barred from suing their employers for alleged violations of the self-care provision of the FMLA.

The Decision Applies Only To Public Employers

If you are a public employer in a state that has not voluntarily relinquished its sovereign immunity with respect to the FMLA, this decision insulates your organization from suits by employees alleging violations of the self-care provision of the Act. This does not mean that your employees have lost all protection under the FMLA. The family-care provision of the FMLA still applies because of the 2003 *Hibbs* decision.

The Supreme Court has not yet ruled on whether states can be sued by employees for violations of the newborn or adopted-child care provision of the FMLA. Although it is now clear that state employees will not be allowed to sue for alleged violations of the FMLA under the self-care provision, it would be prudent for state employers to enforce your medical leave policies evenhandedly. Failing to do so could subject you to liability under other employment laws.

For more information about how, and whether, this new decision applies to your organization, visit our website at www.laborlawyers.com or contact your regular Fisher & Phillips attorney.