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Handbook Snafu Resuscitates FMLA Claim

How can an employee be “eligible” for FMLA leave when he does not meet the statutory eligibility requirements? That question recently was answered by the Sixth Circuit Court of Appeals (covering Ohio, Kentucky, Tennessee, and Michigan) in *Tilley v. Kalamazoo County Road Commission*.

Facts

Mr. Tilley had difficulty completing work assignments. When he missed his third deadline date, Tilley explained he thought he was suffering a heart attack. He was hospitalized for one night. His spouse notified the Commission that he could not return to work for several days. The Commission’s FMLA paperwork cover letter said he was eligible for FMLA leave. Strike one. The enclosed FMLA Eligibility Notice form notified Tilley he was eligible for FMLA leave. Strike two.

Several days later, Tilley was terminated for failing to complete his assignments. In response to his FMLA lawsuit, and despite its prior characterizations to the contrary, the Commission now contended Tilley was **not** an “eligible employee” under the FMLA. Although he had been employed for 12 months and had worked 1250 hours during the 12-month period before his FMLA start date, the Commission did **not** employ 50 employees within 75 miles of Tilley’s work site.

Handbook Passage

The *Kalamazoo* court rejected the Commission’s argument by focusing on the Commission’s FMLA policy. That policy contained the following FMLA eligibility passage: “Employees covered under the [FMLA] are full-time employees who have worked for the Road Commission and accumulated 1,250 work hours in the previous 12 months.” No mention of the 50 employees/75 miles threshold. Strike three.

Equitable Estoppel

Tilley argued the Commission was “equitably estopped” from denying his FMLA eligibility based on that clear handbook misrepresentation. Tilley further alleged he reasonably relied on that handbook provision to his detriment because he sought medical treatment prior to completing his work assignment based on the handbook’s definition of FMLA eligibility. He thought he was eligible.

The *Kalamazoo* court accepted Tilley’s argument. In doing so, it characterized the Commission’s handbook passage as an “unambiguous and unqualified statement” of the Commission’s FMLA eligibility criteria. Having said that, the court did question Tilley’s motivation, noting “[t]here are obvious reasons to doubt the veracity of Tilley’s assertion that in the face of a suspected heart attack he would have remained at work to complete the then-due assignment.” However, the ultimate question of Tilley’s credibility would be answered by a jury.

Promissory Estoppel – Seventh Circuit Case

Several years ago, a faulty handbook FMLA policy, which also omitted the “50 employees/75 miles” eligibility condition, was addressed by the Seventh Circuit Court of Appeals (covering Indiana, Illinois, and Wisconsin) in *Peters v. Gilead Sciences, Inc.* Peters, however, did not argue equitable estoppel to block his former employer’s defense of FMLA ineligibility. Rather, he brought a state-law (Indiana) promissory estoppel claim – an equitable contract remedy that permits enforcement of a promise that induces detrimental reliance on the individual’s part.

The handbook (and subsequent employer letters) promised 12 weeks of FMLA leave – without any mention of the “50 employees/75 miles” eligibility condition. Peters did not meet that particular condition. The appellate court ruled there “is no reason employers cannot offer FMLA-like leave benefits using eligibility requirements less restrictive than those in the FMLA.” Thus, the fact Peters technically was **not** eligible for FMLA leave was irrelevant to his promissory estoppel claim. Accordingly, the court reasoned, the employee handbook “may be enforceable as a contract under

Indiana law.” The case was remanded to the district court for further consideration of the promissory estoppel claim.

Takeaway

Unfortunately, the above employers’ inadvertent failure to accurately detail the FMLA’s employee eligibility conditions was a costly and time-consuming mistake. Instead of defeating the ex-employees’ FMLA claims at the summary judgment stage – because they truly were not “eligible” employees, both employers had to endure ongoing and expensive litigation with an unknown result. Lesson learned. Another New Year’s resolution? Review the contents of your FMLA policy – before it is too late.

For additional information about a legal review of your FMLA policy, please contact [Jeff Shoskin](#) or any other attorney in Frost Brown Todd’s [Labor and Employment Practice Group](#).

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