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## HR Managers May Be Held Personally Liable for FMLA Violations, and Second Circuit Formally Adopts Tests for FMLA Interference and ADA Associational Discrimination Claims

In *Graziadio v. Culinary Institute of America*, the United States Court of Appeals for the Second Circuit<sup>1</sup> ruled that a human resources director could be personally liable as an “employer” for violating an employee’s rights under the Family and Medical Leave Act (FMLA). The plaintiff, a payroll administrator, requested FMLA leave to care for her 17-year-old son, who was hospitalized for previously undiagnosed Type I diabetes. After the plaintiff returned to work, she submitted a medical certification supporting her need for leave to care for her son. That same day, the plaintiff’s 12-year-old son fractured his leg and underwent surgery. The plaintiff requested additional leave and asked whether any further documentation was required. Despite emails and calls by the plaintiff to learn what documentation was required, and despite the plaintiff providing some information, the HR director declared that the plaintiff must come into work for a meeting. In what the court described as “an excruciating exchange,” the plaintiff and the HR director exchanged emails over several days but could not schedule a meeting. The plaintiff retained an attorney who wrote to the company’s president and spoke with the company’s attorney; however, one week later the plaintiff’s employment was terminated. The plaintiff sued the company and the HR director for interference and retaliation under the FMLA and discrimination under the Americans with Disabilities Act (ADA) on the basis of her association with a disabled individual. The trial court granted summary judgment on the claims and the plaintiff appealed.

The appellate court noted that the term “employer” is defined to include “any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer.”<sup>2</sup> In determining that the HR director may be held personally liable under the FMLA, the court applied the economic reality test, which tracks the definition of “employer” found in the Fair Labor Standards Act (FLSA). Under this test, the court analyzed “the totality of circumstances,” including such factors as whether the HR director “(1) had the power to hire and fire employees, (2) supervised and controlled employee work schedules or conditions of employment, (3) determined the rate and method of payment, and (4) maintained employment records.”

### FMLA RULING

After reviewing the evidence, the court concluded that a rational jury could find that the HR director exercised sufficient control over the plaintiff’s employment to be subject to liability under the FMLA. The HR director admitted to participating in a joint decision to terminate the employee and, as the HR director, held “substantial power” over the employee’s termination. The evidence also showed that the

HR director exercised control over the employee's work schedule and conditions of employment, especially concerning her eligibility to return from FMLA leave. As pointed out by the court, though the Payroll Department handled records relating to FMLA administration, the human resources department managed the plaintiff's return to work after FMLA and required accommodations. As summarized by the court, the HR director reviewed the employee's FMLA paperwork, determined whether that paperwork was sufficient, controlled the employee's ability to return to work and under what conditions, and sent the employee nearly every communication regarding her FMLA leave, her return to work, and ultimately her termination of employment. The court also found it important that, until legal counsel intervened, the HR director had instructed the plaintiff to communicate only with her regarding her leave and return to work.

In this important case, the court also formally adopted the test for a claim of interference with FMLA rights. As announced by the court, "to prevail on a claim of interference with her FMLA rights, a plaintiff must establish: 1) that she is an eligible employee under the FMLA; 2) that the defendant is an employer defined by the FMLA; 3) that she was entitled to take leave under the FMLA; 4) that she gave notice to the defendant of her intention to take leave; and 5) that she was denied benefits to which she was entitled under the FMLA." Based on the evidence presented by the plaintiff, the court found that a jury could conclude that the company and the HR director interfered with her right to take and return from FMLA leave.

#### **ADA RULING**

The court also adopted a test for a claim of "associational discrimination" under the ADA. To establish an associational discrimination claim, "a plaintiff must first make out a prima facie case by establishing: 1) that she was qualified for the job at the time of the adverse employment action; 2) that she was subjected to adverse employment action; 3) that she was known at the time to have a relative or associate with a disability; and 4) that the adverse employment action occurred under circumstances raising a reasonable inference that the disability of the relative or associate was a determining factor in the employer's decision." The court endorsed the Seventh Circuit's approach to associational discrimination claims, recognizing three types of situations that might give rise to a claim: (1) "expense," where the adverse action occurs because of the employer's belief that the employee's association with the disabled individual will affect the employer's medical insurance costs; (2) "disability by association," where the employer fears the employee may contract or be predisposed to the disability; or (3) "distraction," where the employer fears the employee will be inattentive at work due to the associated individual's disability. Based on the evidence presented, the court upheld summary judgment from the employer on the ADA associational discrimination claim, ruling that what the plaintiff needed was an accommodation, which the ADA does not require employers to provide to employees with disabled relatives.

#### **TAKE AWAY FOR HR**

Human resources managers may be held personally liable for retaliation and aiding and abetting discrimination under Title VII, the ADA, the Age Discrimination in Employment Act (ADEA), and the Connecticut Fair Employment Practices Act (CFEPA), and for violating the FLSA and the FMLA. They also may be liable for defamation and negligent and intentional infliction of emotional distress, among other common law torts. In performing their important job duties, human resources professionals must ensure that they behave lawfully to avoid being named as a defendant in an employment claim and may want to consult with experienced legal counsel to minimize the risk of an adverse claim.

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For more information or if you have questions about how the issues raised in this legal update affect your policies, practices, or other compliance efforts, please contact one of the following lawyers in the firm's [Labor, Employment, Benefits + Immigration Group](#).

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1. The Second Circuit covers Connecticut, New York, and Vermont.
  2. 29 U.S.C. § 2611(4)(A)(ii)(I). See also 29 C.F.R. § 825.104(d).

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