

Employment Law Notes

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ARE WAIVERS OF FMLA CLAIMS ENFORCEABLE?

The 4th Circuit Court of Appeals ruled that a plaintiff may sue her ex-employer for violations of the Family Medical Leave Act, even though she signed a general waiver of claims and accepted a \$12,000 payment. The case is Taylor v. Progress Energy, Inc., decided July 20, 2005, and available at www.dehnlaw.com.

Legal Background

Section 825.220(d) of the FMLA regulations adopted by the Department of Labor provides that employees cannot waive their rights under the act without the approval of DOL or a court. A different court, the 5th Circuit Court of Appeals, previously ruled that the regulation only prohibits prospective waivers. Retrospective waivers, such as an employee might execute to settle claims of past discrimination, are enforceable in the 5th Circuit.

The Case

Barbara Taylor worked for Carolina Power & Light in North Carolina. She began experiencing health problems that caused her to miss work, and eventually required surgery. CP&L excused some, but not all, of her absences under the FMLA. Her erroneous record of excessive absenteeism later caused her to be included in a reduction in force. In addition to standard severance payments, CP&L offered Ms. Taylor \$12,000 in trade for executing a broad release that included claims under a long list of state and federal employment laws and "...any other federal, state or local law."

Taylor accepted the money but sued CP&L's parent company, Progress Energy, Inc., for violating her FMLA rights. The district court ruled the release

barred her claims and dismissed her suit. Taylor appealed, and the 4th Circuit reversed.

The court ruled that the plain language of the DOL regulation applies to all waivers, not just prospective ones, and thus settlements of FMLA claims must be approved by DOL or a court. The court rejected the employer's argument that the regulation exceeded the DOL's authority, because the act on which the regulation is based did not forbid retrospective waivers, and it runs counter to the public policy favoring private settlement of disputes. The court stated that in adopting the regulation, DOL intended to copy the approach of the Fair Labor Standards Act, which invalidates all waivers of statutory rights under FLSA unless DOL or a court has approved them. The court also rejected the employer's argument that Taylor should not be allowed to sue because she had not returned the money.

Impact of the Decision

The 4th and 5th circuits are split on this issue and no other circuit has ruled on it. The 9th Circuit might follow the 4th Circuit's approach. Can an employer in this circuit absolutely count on the waivers it obtains in settlement of FMLA claims? Such waivers are clearly valid if they have been blessed by DOL or a court, but in most cases an employer would be rightfully leery about involving them. At least until the 9th Circuit rules, there are some things an employer can do with its waivers to improve its position: include a severability clause so that the whole waiver is not invalidated if part of it is, require employees to tender back payments before they challenge the waiver (except as to claims under the Age Discrimination in Employment Act), and include an arbitration clause for resolving disputes. ✍

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