

# HR Director May Be Individually Liable Under FMLA

## Labor & Employment Law Update

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A recent Second Circuit case, *Graziadio v. Culinary Institute of America*, Case No. 15-888-cv (Mar. 17, 2016), offers a sobering lesson for human resources personnel and supervisors who handle the administration of leave requests under the Family and Medical Leave Act (FMLA). The Court held that an HR Director may be liable as an employer, as a “person who acts, directly or indirectly, in the interest of an employer” toward an employee. Finding that the FMLA definition of employer is similar to the definition under the Fair Labor Standards Act (FLSA), the Court agreed with other circuits (including the 3<sup>rd</sup> and 5<sup>th</sup>) who have applied the economic-reality test to find individual liability under the FMLA. [Note: The Seventh Circuit has not yet addressed the issue, although District Courts in Illinois and Indiana have issued opinions agreeing that individuals may be liable under the FMLA.]

The key issue under the economic-reality test is the power the individual has over the employee’s terms and conditions of employment, including whether the individual has the power to hire and fire the employee, maintains employment records, determines the rate and method of pay, or sets and supervises the work schedule. However, the most critical factor is whether or not the individual controlled FMLA leave.

In *Graziadio*, the employee initially took leave to care for a sick child, and then later took additional leave to care for another child who had broken his leg. The Culinary Institute of America (CIA) took issue with the FMLA paperwork, claiming it was not sufficient to justify the absences, and would not let the employee return to work without new documentation. The CIA did not clarify what additional information was needed or why the original paperwork was insufficient. The HR Director never provided any clarification and refused to let the employee return without a face-to-face meeting. The meeting never occurred, but the employee provided updated medical documentation. The HR Director did not respond and ultimately terminated the employee for job abandonment. The employee sued the CIA and HR Director for interference and retaliation under the FMLA among other things.

The Second Circuit found there was sufficient evidence for a jury to conclude that the HR Director was an employer in economic reality and that she interfered with the employee's rights. Even though the ultimate ability to terminate rested with the President, since the President did not conduct an independent investigation and agreed with the HR Director's recommendation to terminate, the HR Director "played an important role." The HR Director also exercised control of the employee's schedule and conditions of employment by handling the FMLA leave, including reviewing the paperwork, and communicating with the employee.

**What can employers take away from this case?** Until the United States Supreme Court weighs in on this issue, employers should inform HR personnel and supervisors handling FMLA requests of their potential individual liability and ensure they are regularly trained on compliance. If employers or their HR personnel choose to challenge an employee's paperwork, they need to be prepared to provide specific reasons to justify their actions.

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