



2nd Circuit Says Managers Can Be Liable for FMLA Violations

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The United States Court of Appeals, Second Circuit has ruled that individual managers can be held liable for violations of the Family and Medical Leave Act (FMLA). Under the FMLA regulations, an “employer” can include individuals acting in the interest of an employer.

The case is *Graziadio v. Culinary Institute of America, et al.*

Cathleen Graziadio was fired from her position at the Culinary Institute of America (CIA) shortly after she took leave to provide medical care for her sons and engaged in a protracted dispute about the validity of that leave. She sued under the FMLA, alleging that she had been wrongfully denied leave and retaliated against for taking leave. The district court granted summary judgment to the defendants on all claims. The 2nd Circuit found that Graziadio presented sufficient evidence to withstand summary judgment on her claims under the FMLA and sent the case back to the lower court for further proceedings.

Graziadio’s sons each had serious health conditions, one right after the other. She was told that the paperwork she submitted in support of her need for FMLA was not

sufficient. Despite repeated requests on her part for clarity as to what she needed to provide, she was not given any guidance as to what was deficient about the paperwork and was fired.

Graziadio sued in district court, bringing claims against CIA, Shaynan Garrioch, the Director of Human Resources, and Loreen Gardella, Graziadio's supervisor. Defendants moved for summary judgment on all claims and, the district court granted their motion in full. It dismissed Graziadio's FMLA claims against Garrioch and Gardella individually, finding that neither qualified as an employer subject to liability under the FMLA. It found that Garrioch lacked meaningful power to hire and fire because Richard Mignault, CIA's Vice President of Administration and Shared Services, retained ultimate termination authority.

Graziadio appealed to the 2nd Circuit. She challenged the district court's conclusion that Garrioch did not constitute an "employer" under the FMLA and therefore could not be held individually liable. The 2nd Circuit agreed with Graziadio because questions of material fact remained and that a jury could find that Garrioch was an "employer".

An individual may be held liable under the FMLA only if she is an "employer," which is defined as encompassing "any person who acts, directly or indirectly, in the interest of an employer to any of the employees of such employer".

While termination authority formally rested with Mignault, Garrioch appears to have played an important role in the decision to fire Graziadio. Mignault admitted that he conducted no independent investigation concerning Graziadio's leave dispute, but merely directed the issue to Garrioch for handling. Garrioch herself described the termination as a joint decision that was made between herself and Mignault. A jury could reasonably conclude that, but for the substantial authority wielded by Garrioch, Mignault would not have exercised his ultimate authority to fire Graziadio and therefore that Garrioch held substantial power over Graziadio's termination.

Graziadio presented evidence that Garrioch exercised control over Graziadio's schedule and conditions of employment.

On the question of whether Garrioch controlled plaintiff's rights under the FMLA, the 2nd Circuit said there seems to be ample evidence to support the conclusion that she did: deposition testimony and email exchanges demonstrate a) that Garrioch reviewed Graziadio's FMLA paperwork, b) that she determined its adequacy, c) that she controlled Graziadio's ability to return to work and under what conditions, and d) that she sent Graziadio nearly every communication regarding her leave and employment (including the letter ultimately communicating her termination). Garrioch specifically instructed others that they were not to communicate with Graziadio and that Garrioch alone would handle Graziadio's leave dispute.

Given all this evidence, the 2nd Circuit concluded that a rational jury could find that Garrioch exercised sufficient control over Graziadio's employment to be subject to liability under the FMLA and vacated the district court's dismissal of FMLA claims against Garrioch.

This case should serve to remind all individuals with responsibility for handling FMLA that they need to know the law and regulations, treat employees fairly and seek guidance when necessary.



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